

United States
Circuit Court of Appeals
For the Ninth Circuit.

FRANK KRAMER,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

Transcript of Record

Upon Appeal from the District Court of the United States
for the Southern District of California,
Southern Division

FILED

FEB 16 1944

PAUL R. DUNN,
CLERK

No. 10593

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF ATTORNEYS

For Appellant:

JOHN S. COOPER

304 S. Broadway
Los Angeles 13, Calif.

For Appellee:

CHARLES H. CARR,

United States Attorney

WALTER S. BINNS,

Assistant United States Attorney

600 U. S. Post Office and
Court House Bldg.
Los Angeles 12, Calif. [1*]

No. 6776

Filed. Jun 30 1943

Viol.: 21 USC 174

18 USC 88

Conspiracy to import and conceal narcotics

In the District Court of the United States in and
for the Southern District of California, South-
ern Division

January, 1943, Term

INDICTMENT

In the Name and by the Authority of the United
States of America, the Grand Jury for the Southern
District of California, at Los Angeles, presents on
oath in open Court:

That

KATHERINE WILSON,
FRANK KRAMER, and
EDGAR WALLACE,

hereinafter called the defendants, on or about April
27, 1943, at San Ysidro, San Diego County, Cali-
fornia, division and district aforesaid, did then and
there knowingly, wilfully, unlawfully, feloniously
and fraudulently import and bring into the United
States of America from a foreign country, to-wit:
the Republic of Mexico, certain narcotic drugs, to-
wit: approximately 8 ounces of smoking opium,
contrary to law;

Contrary to the form of the statute in such case
made and provided and against the peace and dig-
nity of the United States of America.

COUNT TWO

And the Grand Jury further presents on oath in open Court:

That

KATHERINE WILSON,
FRANK KRAMER, and
EDGAR WALLACE, [2]

hereinafter called the defendants, on or about April 27, 1943, at San Ysidor, San Diego County, California, division and district aforesaid, did then and there knowingly, wilfully, unlawfully, feloniously and fraudulently receive, conceal, buy, sell and facilitate the transportation and concealment after importation of a certain preparation of opium, to-wit: approximately 8 ounces of smoking opium, which said preparation of opium, to-wit: approximately 8 ounces of smoking opium, as said defendants then and there well knew, had been imported into the United States of America contrary to law; Contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America.

COUNT THREE

And the Grand Jury further presents on oath in open Court;

That

KATHERINE WILSON,
FRANK KRAMER, and
EDGAR WALLACE,

hereinafter referred to as the defendants, prior to the dates of the commission of the overt acts hereinafter set forth, and continuously thereafter to and including the date of finding and presentation of this indictment, in Los Angeles County, California, and continuing in San Diego County, California, within the division and district aforesaid, did then and there knowingly, wilfully, unlawfully, corruptly and feloniously conspire, combine, confederate, arrange and agree together and with each other, and with divers other persons whose names are to the Grand Jury unknown, to commit certain offenses against the United States of America and the laws thereof, the offenses being all of the offenses hereinbefore in this indictment charged, that is to say, all of the offenses charged against the defendants in the first two counts of this indictment contained: [3]

And the Grand Jury upon its oath aforesaid does further charge and present that at the hereinafter stated times in pursuance of, and in furtherance of, in execution of, and for the purpose of carrying out and to effect the object, design and purposes of said conspiracy, combination, confederation and agreement aforesaid, the hereinafter named defendants did commit the following overt acts at the hereinafter stated places:

(1) On or about April 26, 1943, defendants Katherine Wilson, Frank Kramer and Edgar Wallace, together with Rose Kramer and Gertrude Irwin, left Los Angeles, California, in a 1942 Ford Sedan automobile for San Diego, California;

(2) On or about April 27, 1943, at San Diego, California defendant Frank K r a m e r obtained \$240.00 in \$2 bills at the Fifth and Market Branch of the Bank of America;

(3) On or about April 27, 1943 defendants Katherine Wilson, Frank Kramer and Edgar Wallace, together with Rose Kramer and Gertrude Irvin went to Tijuana, Mexico;

(4) On or about April 27, 1943, at San Ysidor, California, defendant Katherine Wilson concealed 8 ounces of smoking opium in one can on her person;

(5) On or about April 27, 1943, at Tijuana, Mexico, defendant Frank Kramer delivered one can containing 8 ounces of smoking opium and two hypodermic needles to defendant Katherine Wilson.

Contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America.

CHARLES H. CARR

United States Attorney

A true bill.

D. BLAINE MORGAN

Foreman.

[Endorsed]: Filed Jun 30 1943. [4]

At a stated term, to-wit: The January Term, A. D. 1943, of the District Court of the United States of America, within and for the Southern

Division of the Southern District of California, held at the Court Room thereof, in the City of San Diego on Friday the 9th day of July in the year of our Lord one thousand nine hundred and forty-three.

Present: The Honorable: Leon R. Yankwich, District Judge

No. 6776-Crim.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

KATHERINE WILSON, FRANK KRAMER,
and EDGAR WALLACE,

Defendants.

PLEA OF NOT GUILTY

This cause coming on for arraignment and plea of the defendants Katherine Wilson, Frank Kramer and Edgar Wallace; Robert Burch, Jr., Esq., Assistant U. S. Attorney, appearing for the Government; Edgar G. Langford, Esq., appearing as counsel for the defendant Wilson for arraignment only, and for the defendant Edgar Wallace; George Shreve, Esq., appearing as counsel for the defendant Frank Kramer; Eloise Moeller, Court Reporter, being present and reporting the proceedings; the said defendants being present in Court; each defendant separately states his or her true name to be as charged in the indictment, waives the reading

of the indictment, and enters plea or not guilty to the charges contained in the indictment. It is ordered that this cause be, and it hereby is, set for trial for August 3, 1943. Attorney Langford states the defendant Wallace will waive jury trial. [5]

At a stated term, to-wit: The July Term, A. D. 1943, of the District Court of the United States of America, within and for the Southern Division of the Southern District of California, held at the Court Room thereof, in the City of San Diego on Friday the 8th day of October in the year of our Lord one thousand nine hundred and forty-three.

Present: The Honorable: Ralph E. Jenney, District Judge

No. 6776-Crim.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

KATHERINE WILSON and

FRANK KRAMER,

Defendants.

TRIAL

This cause coming on for further trial as to the defendant Frank Kramer; Robert B. Burch, Jr., Esq., appearing as counsel for the Government; John S. Cooper, Esq., appearing as counsel for defendant Kramer; Eloise Moeller, Court Reporter, being present and reporting the proceedings; the defendant Frank Kramer being present in Court:

Edgar Wallace is called, sworn, and testifies on direct examination by Attorney Cooper.

Rose Kramer is called, sworn, and testifies for the defendant.

Frank A. Kramer is called, sworn, and testifies in his own behalf.

At 10:34 A. M. the defendant Kramer rests.

K. G. Linden is called, and having been previously sworn, testifies further on rebuttal for the Government.

The Government rests.

At 10:40 A. M. Court recesses and reconvenes at 10:43 A. M.; all present as before; it is ordered that counsel proceed.

Attorney Burch argues to the Court for the Government.

At 11 A. M. Attorney Cooper argues to the Court for the defendant.

At 11:25 A. M. Attorney Burch makes closing argument to the Court for the Government.

The Court finds the defendant Kramer guilty on all three counts of the indictment and orders the defendant released on his own recognizance until 9:50 A. M. October 12, 1943. [6]

At a stated term, to-wit: The July Term, A. D. 1943, of the District Court of the United States of America, within and for the Southern Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles on Monday the 18th day of October in the year of our Lord one thousand nine hundred and forty-three.

Present: The Honorable: Ralph E. Jenney, District Judge.

No. 6776-Crim.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

KATHERINE WILSON and
FRANK KRAMER,

Defendants.

ORDER DENYING MOTION
FOR NEW TRIAL

This cause coming on for hearing on motion for new trial as to the defendant Frank Kramer, and sentence of the defendants Katherine Wilson and Frank Kramer; James M. Carter, Esq., Assistant U. S. Attorney, appearing for the Government; John S. Cooper, Esq., appearing for the defendant Kramer; Horace Appel, Esq., appearing for the defendant Wilson; Samuel Goldstein, Court Reporter, being present and reporting the proceedings; the said named defendants being present in court:

Attorney Cooper makes a statement.

Katherine Wilson is called, sworn, and testifies at the request of the Court re motion for a new trial on the part of defendant Kramer.

Attorney Cooper argues in support of said motion.

The motions for a new trial, to set aside verdict, and to vacate are ordered denied.

The Court pronounces judgment against the defendant Kramer as follows:

* * * * *

Attorney Cooper informs the Court that he has prepared a notice of appeal and requests that bond on appeal be fixed in the sum of \$2500.00, and counsel for the Government interposing no objections thereto, it is so ordered, subject to the defendant remaining in the custody of the U. S. Attorney pending the approval and filing of said bond.

It is further ordered that sentence of the defendant Katherine Wilson go over until next Monday, October 25, 1943, at 10 A. M. [15]

District Court of the United States, Southern District of California, Southern Division

No. 6776 Criminal Indictment
in three counts for violation of U. S. C.,
Title 21 USC 174; and 18 USC Secs. 88.

UNITED STATES

v.

FRANK KRAMER

JUDGMENT AND COMMITMENT

On this 18th day of October, 1943, came the United States Attorney, and the defendant Frank

Kramer appearing in proper person, and by counsel, John S. Cooper, Esq., and

The defendant having been convicted on a verdict of guilty of the offenses charged in the Indictment in the above-entitled cause, to wit: importation; transportation and concealment after importation of smoking opium, and the defendant having been now asked whether he has anything to say why judgment should not be pronounced against him, and no sufficient cause to the contrary being shown or appearing to the Court, It Is by the Court

Ordered and Adjudged that the defendant, having been found guilty of said offenses, is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for the period of two (2) years in an institution of the penitentiary type to be designated by the Attorney General or his authorized representative on count one; for a period of two (2) years in an institution of the penitentiary type to be designated by the Attorney General or his authorized representative on count two, said sentence of imprisonment to begin and run concurrently with sentence on count one; and, for a period of two (2) years in an institution of the penitentiary type to be designated by the Attorney General or his authorized representative on county three; said sentence of imprisonment to begin and run concurrently with sentence imposed on count one.

It Is Further Ordered that the Clerk deliver a certified copy of this judgment and commitment

to the United States Marshal or other qualified officer and that the same shall serve as the commitment herein.

(Signed) RALPH E. JENNEY

United States District Judge.

The Court recommends commitment to

[Endorsed]: Filed Oct 18 1943 [16]

[Title of District Court and Cause.]

NOTICE OF APPEAL

Name and Address of Appellant:

Frank Kramer, present address 16232 Cantlay Street, Van Nuys, California.

Name and Address of Appellant's Attorney:

John S. Cooper, Attorney at Law, 304 South Broadway, Los Angeles, California, Telephone Madison 5887.

Offense:

The Defendant was indicted and charged with three counts in the indictment. Count I: Importation of smoking opium from a foreign country—violation 21 U.S.C. 174. Count II: Receiving, buying, transporting after importation opium—violation 21 U.S.C. 174. Count III: Conspiracy with other persons to import and conceal narcotics;—violation 18 U.S.C. 88.

Date of Judgment:

The judgment in this case was made and pronounced on the 12th day of October, 1943, by the Honorable Ralph Jenney.

Brief Description of Judgment or Sentence:

The verdict and decision of the Court in this case found the Defendant guilty of Counts 1, 2 and 3 as charged in the indictment. A motion for a new trial was made and denied and the Defendant was sentenced to 2 years Count 1; 2 years Count 2; 2 years count 3; sentence on Count 2 and 3 to run concurrently with the sentence on Count 1. [17]

Name of Prison:

The Defendant was remanded to the custody of the Marshall; bond on appeal was fixed in the sum of \$2500.00 and Defendant is now on bond.

APPEAL

I, the above named appellant hereby appeal to the United States Circuit of Appeals for the Ninth District from the judgment and sentence above mentioned on the grounds set forth below, to-wit:

1. From the order denying the motion for a new trial.
2. From the judgment and sentence herein and each and every count thereof, and he specifies generally that the grounds of his appeal are as follows:
3. That the Court erred in overruling his demurrer to the evidence at the close of the case for the Government and dismissing the case at that point.

4. That the verdict and decision in this case is contrary to the law and contrary to the evidence and said judgment and verdict is not supported by the evidence nor is there sufficient evidence to sustain any count of said indictment.

5. That the court erred in *deying* Defendant's motion for a new trial.

That said Appeal would be taken upon a Bill of Exceptions and other records to be hereafter prepared, served and filed and upon the records and files of this case, and such records and files as are proper under the rules of Appeals in Criminal Cases.

FRANK KRAMER

Appellant.

JOHN S. COOPER

Attorney for Appellant,

Frank Kramer.

Dated: October 18, 1943.

Received copy of the within Notice of Appeal this 18th day of October, 1943.

CHARLES H. CARR

U. S. Atty

By JAMES M. CARTER

Asst U. S. Atty

Attorney for plaintiff

[Endorsed]: Filed Oct 18 1943. [18]

[Title of District Court and Cause.]

BAIL BOND ON APPEAL

824-0016

Know All Men by These Presents:

That we, Frank Kramer, as Principal, and the Northwest Casualty Company, a Washington Corporation, a surety, are jointly and severally held firmly bound unto the United States of America in the sum of Twenty-Five hundred (\$2500) Dollars, for the payment of which sum we and each of us bind ourselves, our heirs, executors, administrators and assigns.

The condition of the foregoing obligation is as follows:

Whereas, lately, to-wit, on the 18th day of October, 1943, at a term of the District Court of the United States, in and for the Southern District of California, Southern Division, in an action pending in said Court in which the United States of America is Plaintiff, and Frank Kramer was Defendant, judgment and sentence was made, given, rendered and entered against the said Defendant in the above entitled action, whereas he was convicted as charged in the indictment;

Whereas, in said judgment and sentence, so made, given, rendered and entered against said Frank Kramer, it was ordered and adjudged that the defendant, having been found guilty of said offense, is hereby committed to the custody of the Attorney General for imprisonment in an institu-

tion of the penitentiary type, to be designated by the Attorney General or his Authorized representative for a period of Two years.

Whereas, the said Frank Kramer, has filed notice of appeal from the said conviction and from the said judgment and sentence, appealing to the United States Circuit Court of Appeals for the Ninth Circuit; and

Whereas, the said Frank Kramer, has been admitted to bail pending the decision on said appeal, in the sum of Twenty five [19] hundred (\$2500) Dollars.

Now Therefore, the conditions of this obligation are such that if said Frank Kramer shall appear in person, or by his attorney, in the United States Circuit Court of Appeals for the Ninth Circuit, on such day or days as may be appointed for the hearing of said cause in said Court and prosecute his appeal; and if the said Frank Kramer shall abide by and obey Court orders by the said United States Circuit Court of Appeals for the Ninth Circuit, and if the said Frank Kramer shall surrender himself in execution of said judgment and sentence, if the said judgment and sentence be affirmed by the United States Circuit Court of Appeals for the Ninth Circuit; and if the said Frank Kramer will appear for trial in the District Court of the United States, in and for the Southern District of California, Southern Division, on such day or days as may be appointed for retrail by said District Court, and if the said judgment and sentence against him be reversed, then this obligation shall

be null and void; otherwise to remain in full force and effect.

This Recognizance shall be deemed and construed to contain the "express agreement", summary judgment and execution thereon, mentioned in Rule 13 of the District Court.

FRANK KRAMER

Principal

Address—16232 Cantlay St.

[Seal]

NORTHWEST CASUALTY
COMPANY, a Washington
Corporation

By A. W. APPEL

Its Attorney-in-Fact
Surety.

State of California,

County of —ss.

On this 18th day of October, A. D. 1943, before me, Marva Weede, a Notary Public in and for the County and State aforesaid, duly commissioned and sworn, personally appeared A. W. Appel, Attorney-in-Fact of the Northwest Casualty Company, a Washington corporation, to [20] me personally known to be the individual and officer described in and who executed the within instrument, and he acknowledged the same, and being by me duly sworn, deposes and says that he is the said officer of the Company aforesaid, and the seal affixed to the within instrument is the corporate seal of said Company, and that the said corporate seal and his signature as such officer were duly affixed and sub-

scribed to the said instrument by the authority and direction of the said corporation.

In Witness Whereof, I have hereunto set my hand and affixed my official seal at my office in the City of Los Angeles County of Los Angeles, the day and year first above written.

[Seal]

MARVA WEEDE

Notary Public in and for the County of Los Angeles, State of California.

Approved as to Form

JAMES M. CARTER

United States Attorney

I hereby certify that I have examined the within bond and that in my opinion the form thereof is correct and surety thereon is qualified.

JOHN S. COOPER

Attorney for Defendant and
Appellant.

The foregoing bond is approved this 18th day of October, 1943.

RALPH E. JENNEY

United States District Judge.

[Endorsed]: Filed Oct 18 1943. [21]

[Title of District Court and Cause.]

ORDER EXTENDING TIME TO FILE
BILL OF EXCEPTIONS

Notice of Appeal having been filed in the above entitled matter, and good cause appearing therefor,

It Is Hereby Ordered that the Defendant, Frank Kramer, have ninety days from and after this date in which to prepare, serve and file a Bill of Exceptions to be used upon the Appeal in this matter.

Dated at Los Angeles, California, Oct. 18th, 1943.

RALPH E. JENNEY

District Judge of U. S. Court.

[Endorsed]: Filed Oct 18 1943. [22]

In the United States District Court, Southern District of California, Southern Division

No. 6776-Crim.

FRANK KRAMER,

Appellant,

vs.

UNITED STATES OF AMERICA,

Respondent.

PRAECIPE

To the Clerk of the United States District Court:

In order to properly prepare the transcript on appeal you are hereby directed to include therein:

1—The indictment of the defendant and his plea thereto;

2—The decision of the court after the trial of the action;

3—The motion for a new trial and the amended motion for a new trial;

4—The judgment of the court;

5—The notice of appeal and the order allowing the appeal;

6—Bond on appeal of the defendant;

7—The bill of exceptions as settled and allowed by the court;

8—Citation on appeal.

The clerk in preparing the transcript pursuant to the rules of the Circuit Court of Appeals is requested not to duplicate the papers on file.

JOHN S. COOPER

Attorney for Frank Kramer.

It is hereby stipulated and agreed that the above papers which are on file in the office of the Clerk of the District Court constitute the record upon which the Appellant will rely. There [23] being included therewith one paper which is termed an assignment. If such paper is evidence it is stipu-

lated that it may be used and included in the record on appeal.

JOHN S. COOPER

Attorney for defendant and
appellant, Frank Kramer.

CHARLES H. CARR,

United States Attorney,

JAMES M. CARTER,

Assistant United States Att'y

WALTER S. BINNS,

Assistant United States Att'y

By WALTER S. BINNS

Attorneys for the United
States of America

[Endorsed]: Filed Jan 17 1944. [24]

[Title of District Court and Cause.]

CERTIFICATE OF CLERK

I, Edmund L. Smith, Clerk of the District Court of the United States for the Southern District of California, do hereby certify that the foregoing pages numbered from 1 to 24 inclusive contain full, true and correct copies of: Indictment; Minute Orders Entered July 9, 1943 and October 8, 1943 respectively; Motion to Vacate and Set Aside Verdict or Decision and Grant a New Trial; Amendment to Motion to Vacate and Set Aside Verdict or Decision and Grant a New Trial; Minute Order Entered October 18, 1943; Judgment and Commit-

ment; Notice of Appeal; Bail Bond on Appeal; Order Extending Time to File Bill of Exceptions and Praecipe, which, together with the Original Bill of Exceptions and Specifications of Errors transmitted herewith, constitute the record on appeal to the Circuit Court of Appeals for the Ninth Circuit.

I further certify that my fees for preparing, comparing, correcting and certifying the foregoing record amount to \$9.25 which sum has been paid to me by appellant.

Witness my hand and the seal of said District Court this 21 day of January, 1944.

[Seal]

EDMUND L. SMITH,

Clerk

By THEODORE HOCKE

Deputy Clerk

In the United States District Court Southern
District of California, Southern Division

No. 6776—Criminal

FRANK KRAMER,

Appellant,

vs.

UNITED STATES OF AMERICA,

Respondent.

BILL OF EXCEPTIONS

Bill of exceptions of the defendant, Frank Kramer, to be used on appeal from the judgment

herein, and for all purposes for which a bill of exceptions may properly be used:

Be it remembered, that the above entitled action was brought on regularly for trial, and was tried before the Honorable Ralph E. Jenney, judge, jury being waived. The trial commenced Thursday, October 7th, 1943, and the hearing of evidence both oral and documentary for both plaintiff and defendant continued to and including Friday, October 8th, 1943, and the judge having heard the arguments of counsel for both plaintiff and defendant, rendered his verdict therein on the 8th day of October, 1943. Assistant United States Attorney Robert B. Burch appeared as attorney for plaintiff and Messrs. George H. Shreve and John S. Cooper appeared as attorneys for defendant. The following are the proceedings which took place on and during the trial:

JOSEPH ZUNG

called as a witness on behalf of the plaintiff being sworn, testified:

Direct Examination

That he was a manager of banking for the Bank of America, 5th and Market Branch, San Diego; that he identified both the defendants Edgar Wallace and Frank Kramer; he had known the defendant Wallace [1*] for some time; that he saw both of the defendants on the 27th day of April, 1943; Defendant

*Page numbering appearing at foot of page of Bill of Exceptions.

(Testimony of Joseph Zung.)

Wallace had approached him some time before in regards to financing an automobile, and after seeing his credit record, and it seemed to be O.K. he told him that he would. And the particular car he was looking at after that time he decided not to buy, and he just dropped the subject, and some weeks later, which was the day they came to the bank there, they had another car they wanted financed, and it was around 10:00 o'clock, just after they opened the doors that morning, and the two defendants talked to him about the car. But the conditions were such that he could not finance the car, and they said if they could arrange it they would come back, and that nothing was said about changing money.

Cross Examination

Witness Joseph Zung testified: That Wallace had talked to him before about financing a car; that on the 27th day of April defendants Wallace and Kramer came in and they said that they had the car with them and they wanted him, as the manager of the bank, to arrange to finance that car; defendant Wallace told him how much he had to pay down on the car at that time, and it wasn't sufficient; that when he could meet the payment they would finance the rest of the car; defendant Wallace said he would see him later about it. There had been some discussion with one of the Bank of America men in Los Angeles, about a previous car; that he had not seen Kramer until that morning when he came in the bank. He did not remember how much money

(Testimony of Joseph Zung.)

Mr. Wallace stated he had at that time and he did not remember what the purchase price of the car was; that the only object of the discussion was the financing of this automobile.

DOROTHEA T. BULLOCK,

called as a witness by and on behalf of the plaintiff, being sworn, testified: [2]

Direct Examination

That she was a teller at the Bank of America at 5th and Market, San Diego; that she believed that she saw Mr. Wallace at the Bank on the 27th day of April. He came to her to exchange some money for \$2.00 bills and she believed she changed about \$240.00. She did not remember seeing Mr. Kramer.

Cross Examination

Miss Bullock testified: that the only transaction she had concerning \$2.00 bills was with Mr. Wallace; that her principal occupation in the bank was the duties of a teller—she would take the deposits and cash checks and exchange money for \$2 bills; she did not remember how many transactions she had on the 27th day of April; she believed the bills she changed for Mr. Wallace were mostly \$10's and \$20's, but she was not certain; she imagined she gave them to him in a package of 100, and a package of 50 and then some loose ones; that she had to take some out of the vault and she got \$50.00 from

(Testimony of Dorothea T. Bullock.)

another teller; they kept a record of that transaction, and she had some loose \$2's, which brought it up; she did not remember how much money she started the morning's business with; they start the next day's work with the amount of cash they had on hand the night before; she did not handle Mr. Wallace's account there at the bank; she did not know for sure whether he had an account at the bank; she did not remember having seen Mr. Wallace before that day; she had been working at the bank four months prior to the 27th day of April.

Redirect Examination

Miss Bullock testified that a picture of Mr. Wallace was shown her next day, the 28th, and she was asked about him.

KATHERINE WILSON

called as a witness by and on behalf of the plaintiff testified:

Direct Examination

That she lived in Los Angeles; she knew the defendant Kramer not too [3] well, she had known him about seven or eight months; she also knew his wife and the defendant Wallace; she had known defendant Wallace about two years, or more; and that she was acquainted with Mrs. Wallace—she had known her for a long time. She came to San Diego about the 26th day of April with Mrs. Irvin, Mr. and Mrs. Kramer and Mr. and Mrs. Wallace.

(Testimony of Katherine Wilson.)

She lived with Mrs. Irvin in Los Angeles. They arrived in San Diego by automobile some time in the early morning of the 27th; that the Wallace's have a home in San Diego and they all stayed there. The next day Mrs. Kramer wanted to go shopping and so they went over across the line to get some stockings and other things she said she wanted to buy for her house. Mrs. Wallace did not go. Mr. and Mrs. Kramer and Mrs. Irvin, Mrs. Wallace and she went; she imagined they reached Tijuana about 11:00; when they got there the women got out of the car on the main street and started to go into the different stores to shop; she imagined they shopped for about four or five hours; she was very tired. The men were not with them when they were shopping—she did not know where the men were; that the next time they saw the men was, they happened to see them on the street and they got in the car with them and they went for a ride and then they came back and the men dropped them again and they went back shopping. The second time, she imagined they shopped for about one hour and a half; she did not know exactly. The men had the car. The next time they saw the men was on the main street. She was in the store with the women when the men returned; they came out of the store and happened to see them there. The men were walking down the street looking for them. The car was parked down the street somewhere but she couldn't tell exactly. At that time she had a conversation with Frank Kramer. His wife was buying a hat

(Testimony of Katherine Wilson.)

and they left her in the store and walked down the street and he handed her a package. It was a can and he told her to carry it; she thought it was nothing; she took it and carried it. She put the can in her coat pocket. He also gave her [4] a little package along with it, she did not investigate, just stuck it in her pocket. The can was a Hershey Chocolate can and that was all she knew. There was no more conversation about the can, only when they went in to get stockings he asked her where she had it, and she said it was in her pocket and he said "You better put it away good." There was nobody else there when they went to get the stockings. When they were at the store with Mrs. Kramer, Mrs. Kramer told defendant Kramer to buy her, Katherine Wilson, some stockings. I said I did not have any money. And so he said: "Buy you some?" and he laughed and said "Well, you will have to work for it," and she said, "Work for it? you are crazy." So they went on to get the stockings. After she came out of the store she went into the rest room of the Long Bar and put the can in her brassiere; she imagined the size of the chocolate can was five or six inches, something like that. (Admitted as Ex. 1, chocolate can containing opium. Admitted as Ex. 2, small package containing hypodermic needles.) When they were in the store and he told her to put the can away he said that he would give it to Mrs. Kramer but she didn't have anywhere to carry it. She and Mr. Kramer were alone

(Testimony of Katherine Wilson.)

in the store when that conversation took place. When Mr. Kramer originally handed her the two packages she put them in her outside pocket; when she went into the rest room she put the can in her brassiere and the small package in her shirtwaist pocket; then she came out of the rest room and got in the car and sat down. Mr. and Mrs. Kramer were sitting in the front; Mrs. Irvin, defendant Wallace and she were in the back. They went to the Line and were stopped and asked some questions and told to pull over to the side. She did not remember if there was anything said about either of the two packages when they were driving to the Line. Mr. and Mrs. Kramer were sitting in the front, Mr. Wallace was sitting in the middle of the rear seat and she was on his left-hand side. When they got to the Line someone came up to them from the right-hand side of the car as it was facing toward the United States. Mr. Kramer was driving and Mrs. Kramer was seated at the right of her husband. [5] The officer asked Mr. and Mrs. Kramer whether they were citizens of the United States, and what they had brought across the Line, and where they were born. They said they were citizens. Mr. Kramer said he didn't bring anything across; Mrs. Kramer said she brought some handkerchiefs, some stockings, a hat and some slippers. She said nothing about the cost of them and showed them to the officers. Then the officer questioned them in the back seat and Mrs. Irvin said she brought

(Testimony of Katherine Wilson.)

some stockings and showed them to him. Then he asked Mr. Wallace what he bought, and she didn't think he had bought anything. Then he asked her what she had bought and said a pair of stockings and a pair of slippers and showed them to him. He asked her where she was born. The officer said the car had been seen in places where it shouldn't have been. He was standing on the left-hand side of the car at the front, and he said this car had been seen in places that it shouldn't have been seen, and told them to pull up over to the side and he got on the running board and Mr. Kramer drove the car up to the right of the road. He asked them to get out and come to the Customs House and she asked him should she bring her packages and he said no, leave them in the car, which she did, and they all went to the Customs House. Everybody was questioned separately. An officer questioned her and a white lady searched her and saw the can and the package in the course of the search.

Cross Examination

Katherine Wilson testified: that she was 41 years old and a single woman. She had lived with Mrs. Irvin for 23 years. When she came to California she came to her aunt and her aunt did not treat her right, and she went to live with Mrs. Irvin and had lived with her ever since. She came from Tacoma, Washington. Mrs. Irvin's husband died. During the time she lived with Mrs. Irvin, Mrs. Irvin served a term in the penitentiary at Cal-

(Testimony of Katherine Wilson.)

ifornia. She knew that Mrs. Irvin had used narcotics but Mrs. Irvin told her she wasn't going to [6] use it any more. She herself knew nothing about narcotics. She didn't know whether Mrs. Irvin used narcotics hypodermically or smoked them. She knew Mr. Wallace in Los Angeles before he moved to San Diego. When Wallace came to Los Angeles he stayed at his mother's house one night and then he stayed at their house and she was friendly with him. She understood that Mr. Wallace was trying to buy an automobile from Mr. Kramer, who was in the automobile business. She knew that a month or so before that they had had a transaction concerning another automobile, and she knew that some time before the 26th or 27th of April, Mr. Wallace had contacted Mr. Kramer and Mr. Kramer had a car to sell Mr. Wallace. She knew that Mr. Wallace and Mr. Kramer were going to attempt to try to finance that automobile in San Diego, and that was the reason she came to San Diego, she came down in the car. Mr. and Mrs. Wallace asked Mrs. Irvin and her to ride down and Mr. Kramer said he would bring them back. Mr. and Mrs. Kramer, Mr. and Mrs. Wallace and Mrs. Irvin and she came in this automobile to San Diego. On the way down she heard talk about buying the car. Nothing was said on the way down by anybody about going to Tijuana. They arrived about 2:00 or 3:00 in the morning on the same day they went to Tijuana. She had never lived in San Diego; she did housework in Los Angeles and Mrs. Irvin occasionally worked at

(Testimony of Katherine Wilson.)

housework—she went and served parties and things like that. She had been to Tijuana lots of times. She went with some friends that lived in San Diego about six or seven years ago. She had been to Tijuana with Mrs. Irvin about three times, they just went over to have a few drinks and look around, that was during the last two or three years, they shopped and bought little articles and souvenirs; they did not go across the line everytime they came to San Diego. She had never been across the Line alone. The only thing she knew about Tijuana was that they have some barrooms there and some stores. She did not know if Mrs. Irvin, when she was using narcotics, ever went across the Line to get any narcotics. She did not know where she got them. [7] She had never gone across the Line to Tijuana and got narcotics for Mrs. Irvin and brought them back to her or arranged for Mexicans to bring narcotics across the Line. She did not know anybody in Tijuana that dealt in narcotics. She did not know a Chinaman down there. She was arrested about 4:00 o'clock in the evening and along with Mrs. Kramer and Mrs. Irvin they were taken to the City Jail. She stayed there that night and all the next day and they transferred her over to the County. She did not know that on the second night that the matron in the jail where Mrs. Irvin was, had to give her an injection of narcotics because she was sick, because she wasn't there with her. Mrs. Kramer and Mrs. Irvin were together and she was

(Testimony of Katherine Wilson.)

off by herself. While she lived with Mrs. Irvin she knew nothing about narcotics, if Mrs. Irvin used it she didn't use it around her. She had never seen smoking opium and did not know that Tijuana had the reputation of smoking opium and had places where they smoked opium. She did not know anything at all about the reputation of Tijuana. She knew the men had gone to the bank in San Diego and also that Mrs. Kramer said she wanted to go to Tijuana to make some purchases and that all five of them got into the automobile to go to Tijuana in order to make some purchases. She had about \$3.00 or \$4.00 and some change when they left San Diego and she did not know how much Mrs. Irvin had. She did not know how much money Mrs. Kramer had. She changed her money at the Line, at the bank near the Line. She thought they all got out of the car and Mrs. Irvin changed her money and Mrs. Kramer did the same thing, but whether or not the men did, she did not know. Then they got back in the car and went across the Line. They went to the main street that has the stores on it and the Long Bar. She didn't know exactly what corner it was that the three women got out of the car but it was there on the main street. Then they went shopping and the men took the automobile and went somewhere, she didn't know where they went. During the shopping tour the three women stayed [8] together and went from store to store. She had no recollection of having gone anywhere else except in a store and some place to eat. During

(Testimony of Katherine Wilson.)

the time they were shopping she talked to a boy that she hadn't seen for a long time, a colored boy. She saw a Mexican down there, but she did not talk with him—he was with the men. She did not have any transaction with him. She had never seen the Mexican before in her life. The only person on the street who spoke to her was a colored boy. They shopped around for two or three hours the first time and during that time they had something to eat and Mr. Kramer and Mr. Wallace came back. When Kramer and Wallace came back there was a Mexican boy with them. *The* the five of them and the Mexican boy took a ride and went to the old race track and the Mexican boy had a house there. She did not go in the house. Mr. Wallace, Mr. Kramer, Mrs. Kramer and Mrs. Irvin went in the house. Then the six of them got in the automobile and came back to Tijuana. The three women got out of the car and the men, including the Mexican boy left in the car. Then they started out shopping some more, and during that time she did not see anybody outside of the merchants to talk to. She did not see Mrs. Kramer or Mrs. Irvin talk to anybody. They went in a drug store and Mrs. Kramer bought some makeup. While she was in the drug store she did not buy two hypodermic needles. (referring to Ex. 2). They came out of the drug store and did some more shopping and in a short time Mr. Wallace and Mr. Kramer met them on the main street. The men did not meet them on the street; Mrs. Irvin was

(Testimony of Katherine Wilson.)

standing on the street, because she was sick and left the store and had walked down to see whether she could see the car. She said that was where she was going and Mrs. Kramer was trying on some hats and she, Katherine Wilson, came out to see if she could see Mrs. Irvin and when she did, Mrs. Irvin and Mr. Kramer were walking down the street talking. Mrs. Irvin went and sat in the car because she was tired and Mr. Kramer came into the store to his wife. She had [9] the things she had been buying in her hand and Mrs. Kramer had her purchases in her hands, and Mrs. Irvin bought a pair of stockings and she had the packages in her hands. Mrs. Kramer had about three or four packages. Then Mr. Kramer and she went into a store to get some stockings and while they were walking down the street Mr. Kramer handed her a can, while they were going to the store. She had known Mr. Kramer in connection with buying the automobile and that was the only way. All she knew about Mr. Kramer was that he sold second-hand automobiles, and that was the extent of her acquaintanceship with him, and she knew he was trying to sell an automobile to Mr. Wallace. The can Mr. Kramer handed her was a Hershey cocoa can, and she did not think anything of it. When he handed her the can he said "Here, carry this." and she thought it was a cocoa can and she didn't pay attention to it, she just put it in her pocket—there was another little package on top and she just put it in her pocket; she didn't notice that it was a hypodermic

(Testimony of Katherine Wilson.)

needles, she had been drinking. Then they walked into a store where there were some stockings, but she didn't want any more stockings, his wife had asked him to buy her some. While his wife was there he said to her "Did you put that away?" And she took the tin of Hershey's cocoa, thinking it was Hershey's cocoa and put it in the inside of her dress, and she did not know what it was, and when she put the small package in her shirtwaist pocket, after taking it out of her coat pocket, she did not look at it and see that it was hypodermic needles, she noticed it was another package and was small and she put it there. On the way back from Tijuana she didn't believe there was any discussion about the purchases the women had made. They were stopped at the Line and the three women were taken in and searched. When they stripped her they found a can of Hershey's cocoa in her brassiere. It was not so heavy. She knew it was there but she did not know what it was. She did not think at the time when she brought it across the Line that she was [10] smuggling something or bringing something across the Line that she couldn't declare—she didn't even think about it. She did not tell the man at the Line that she had a bottle of Hershey's Cocoa in her brassiere. She didn't have any reason for not telling him—nobody had told her not to say she had a bottle of Hershey's cocoa or the small package. She didn't know why she didn't. Then she was interviewed by one of the narcotic agents and made a

(Testimony of Katherine Wilson.)

statement to him which he wrote down and she signed. He typed it himself there in her presence. He asked her questions and she answered those questions. She told the agent, in substance, that she had met a man in Tijuana by the name of Frank, a Mexican-looking fellow, who had given her the package and told her to bring it over to San Diego and give it to him at the bus line. She didn't remember what she told him about the hypodermic needles. Before taking her over to the county jail, the agent took her up to the bus station so she could identify for him this Frank, the Mexican man, and they stayed there for about half an hour. At the time she made those statements to the officer she was not telling the truth, but after they came back from the bus station she told the officer the truth—he wrote it down on the typewriter, the second statement. The first statement she made before she went to the bus station and swore to it was about the Mexican man named Frank, then when she came back from the bus station she told the officer, Mr. Linden, the first statement was not true; that she swore to a lie, but she had been drinking and was liable to say almost anything, but after she came back she told him the truth. That on the 29th she was arraigned before a United States Commissioner and her bond was fixed and she got out on bond. She was present at the hearing on May 4th at all times and hears Mr. Linden testify under oath that was the statement she made to him and at the conclusion of that hearing she was the only one

(Testimony of Katherine Wilson.)

that was held to await the action of the Grand Jury. The rest of them were discharged. She didn't know whether it was before or after that [11] hearing, she went in and had a conversation with Mr. Burch, United States District Attorney, and told him about Mr. Kramer giving her the package. She knew she was going to be indicted; she was arraigned after the indictment and the indictment was handed to her personally; she did not have an attorney the first time she came into court; then she employed Mr. Appel and Mr. Appel went down to San Diego with her and at that time she was fully aware of the fact that she was charged in Count 1 with importing a narcotic drug, and in Count 2 with transporting and facilitating the transporting of the same smoking opium within the United States and in Count 3 with entering into a conspiracy with Mr. Wallace and Mr. Kramer for the purpose of transporting opium and possessing opium in this country, and after consulting with her attorney and reading the indictment over herself she entered a plea of guilty as to the first two counts of this indictment, knowing the fact that if her possession was innocent that she was not guilty, but she knew that she had been the one who brought the package across. That after Mrs. Irvin was released and discharged from the preliminary examination, she and Mrs. Irvin went back to Los Angeles and continued to live together, but she did not know whether Mrs. Irvin used narcotics or not. Mrs. Irvin died on the 5th day of

(Testimony of Katherine Wilson.)

August in the General Hospital, Los Angeles. At the time they were in Tijuana she did not see Mrs. Irvin talking to a Chinaman named Louie, and Mrs. Irvin did not give her a package of opium after talking to the Chinaman. When Frank Kramer gave her the package and told her to put it away she did think something was wrong, and she knew one package contained hypodermic needles before she crossed the Line but she did not know what was in the can. She knew it was something he didn't want seen, didn't want declared. She knew Mr. Wallace was charged with having entered into a conspiracy with her and Frank Kramer to bring narcotics across the Line. She did not enter into any conspiracy or agreement of any kind or character with Frank Kramer to bring narcotics across the Line, nor with Mr. [12] Wallace, nor with Mrs. Irvin. She had been arrested before for narcotics, but never convicted, it was just because she happened to be present in the house where there were narcotics.

By Mr. Langford:

At the time she and Mrs. Kramer and Mrs. Irvin drove over to the old race track, they stopped in front of a house and remained in the car about 15 or 20 minutes—she sat in the car while the other five people went into the house; while she was sitting there she saw a truck with some water bottles on it and some other car drive up there in the immediate vicinity of that house, but she did not

(Testimony of Katherine Wilson.)

know who was in the other car, she did not pay much attention—the two cars just passed and turned around on the hill and went back down. The reason she did not go in the house was because she was tired and didn't feel good. There was nothing said by anybody on the way to the house except about taking the gentleman home. She did not see any package when the four people came out of the house and she did not hear any conversation about narcotics while they were in Tijuana or on the way to Tijuana from San Diego. She sat in the car outside of the bank when Mr. Kramer and Mr. Wallace went into the bank about the car transaction. There was a conversation in which it was stated by Mr. Kramer or Mr. Wallace that they hadn't been able to refinance the deal with the bank so that Mr. Wallace couldn't buy the car from Mr. Kramer.

Redirect Examination

The first time she saw this Mexican was after they had been walking around awhile, the Mexican was with the two men when they came back the first time. She was not introduced to him formally, they said, "This is Joe." She did not hear any conversation they had with the Mexican, she did not pay much attention to them. When they took a ride out to the old race track the Mexican was with them and they let him off at a house near the race track and then he came back with them [13] and the men let them off and the Mexican drove off with the men and that was the last she saw of him and when the men came back the Mexican was not with them.

(Testimony of Katherine Wilson.)

Cross Examination

Katherine Wilson testified: That after Mr. Kramer gave her the can he told her to put it away somewhere and she went into a washroom and took the can out of her pocket and put it in her brassiere. At the time she made the second statement to Mr. Linden, after returning from the bus station, wherein she stated Frank Kramer had given her the can, the following questions and answers were typed by Mr. Linden and signed by her:

Mr. Linden: "Your meeting this man Frank does not agree with the testimony given by other witnesses in this case. Do you wish to tell us just who gave you this package in Tijuana and what you were to do with it?"

A. Frank Kramer gave me the package.

Q. Who was present when he gave it to you?

A. He was standing outside the car and everybody else was in the car.

Q. They were.

Q. Never mind. Let me ask you these questions:

Q. Where in Tijuana did this take place?

A. On the main street near the Long Bar.

Q. Just what did Mr. Kramer say to you?

A. He said to put this in your dress and take it across. That is all. But he didn't offer me nothing to take it across.

Q. And did you put it in your dress at that time?

A. No, I stuck it in my pocket.

(Testimony of Katherine Wilson.)

Q. Was anybody but Frank Kramer in the car when you put the package in your pocket? [14]

A. I am pretty sure they were.

Q. When did you take it out of your pocket and put the package in your brassiere?

A. He and I were outside the car when he first gave it to me. I got in the car and we started down the street, we had just rode about half a block and then I put the package in my brassiere.

Q. Who else was in the back seat when you put the package in your brassiere?

A. Gertie, Mr. Wallace; Mrs. Kramer was sitting in front with her husband.

Q. Who knew that Kramer had given you this package?

A. I don't know whether anybody else knew he gave it to me. He never said nothing."

She did make a statement to Mr. Linden that while she was in the car that she took the package out of her pocket but she was so tired and worn out that she might have said most anything. She had been drinking. She knew who had given it to her but she didn't say it at first. She did tell him that Mr. Kramer gave it to her when they came back from the station. She did not read the statement before she signed it, as she was tired. Mr. Kramer gave it to her.

GEORGE BUNCASTLE,

called as a witness on behalf of the plaintiff, testified:

Direct Examination

He is a Customs Control Inspector; that on the 27th day of April, 1943, he followed an automobile in Tijuana; he observed a Ford Sedan having two men in the car—a white man driving, and a colored man as passenger in the vicinity of Fifth and Avenue Revolution about 11:30 or 12:00, noon. The car stopped on Fifth Street near Avenue Revolution, and the colored man got out and went into the side door of a saloon, and was gone probably two or three minutes and came out and got in the car and the car started up, and went down the main part of town, and parked in front of a combination billiard hall and pool hall and restaurant known as La Corona, where both got out the side and the colored man and the white man went inside, and the colored man stood [15] on the sidewalk, finally crossing the street, loitered a few minutes, and came back and got in the car and waited for the white man. They went to the end of the street at First and Avenue Revolution, cruising slowly to the south over the Avenue Negrita, between Fifth and Sixth, and stopped in front of a place known as Enrugui's, where the colored man got out again and went down the side of the building, and came back in a very short period of time, not to exceed five minutes, got back in the car, and the car cruised south on the same street; the car was under his observation

(Testimony of George Buncastle.)

probably an hour or so. The occupants of the car were later identified by him as Mr. Kramer and Mr. Wallace. He recognized them sitting in Court.

Cross Examination

George Buncastle testified: That on the 27th day of April he was operating in civilian clothes; that he observed a colored man and a white man in a Ford automobile driving around Tijuana—the white man was driving the automobile. They went to different places, mostly saloons and then they came back to Tijuana, and were headed for the main thoroughfare when he left them to return to the station at the Port of Entry.

ROBERT SCOTT,

called as a witness on behalf of the plaintiff, testified:

Direct Examination

That he is a Customs Patrol Inspector; that on the 27th day of April, 1943, he had occasion to follow an automobile in Tijuana—a Ford Sedan, license No. 60Z864. They were parking across the street from Caesar's Hotel on Avenue Revolution at shortly after 2:00 in the afternoon. At the time he first saw them there was a white man, a colored man and a colored woman, one person sitting in the front seat and one or two others in the back seat. Mr. Kramer and Mr. Wallace, the white man and the

(Testimony of Robert Scott.)

colored man, were standing on the left of the car, and Mrs. Irvin was getting into the car in the back seat; and very shortly the men got in and drove in toward the old [16] race track, going up in that direction. It was pretty hard to follow up in that district without being discovered so he returned to his station. Then later about 3:30, he went back again, and at that time he located the car across the street on Avenue Revolution in front of what is known as Tiopepi's Bar. At that time Mr. Wallace was sitting in the car and Mr. Kramer was on the corner talking to a Mexican. Not being able to get a place or position to see what transpired, he came back. He turned around to find a place, and then the car had disappeared, and then he returned to the Line, and waited until they came over. At approximately 4:30 the car came across the Line to the Port of Entry.

Cross Examination

Robert Scott testified: That on the 27th day of April, he followed a car containing a white man and a colored man and a couple of colored women headed in the direction of the old race track; that there was no place to hide as the road was pretty level so he returned to his station; then he came back later and saw Mr. Wallace in the car and Mr. Kramer on the street talking to a Mexican. Then he saw these people when they came across the Line. He saw in their car silk hosiery, cosmetics and things of that character.

J. T. MITCHELL,

called as a witness on behalf of the plaintiff, testified:

Direct Examination

That he is a Customs Guard and was stationed at the Port of San Ysidro on the 27th day of April, 1943; he observed a Ford automobile crossing the Line into the United States at about 4:00 p.m.; that the occupants of the car were Mr. and Mrs. Kramer, Mr. Wallace, Miss Wilson and Mrs. Irvin; he inspected this car and got the declarations; he asked Mr. Kramer what he had brought from Mexico and he declared nothing; Mrs. Kramer, who was sitting alongside her husband declared she had some hose, some cosmetics, and a pair of slippers; he then went to the rear seat of the car and asked the occupants there what they [17] had brought, and Mr. Wallace declared nothing, and then Mrs. Irvin declared a pair of hose and some slippers. Miss Wilson declared one pair of hose. He then asked all the people in the car if they had brought anything else from Mexico, and they all declared nothing else; and then he told the driver of the car to pull out of the line of inspection, and he got on the running board of the car while they pulled over; and the Control Inspectors took charge after that.

MISS MARY J. CLARK,

called as a witness on behalf of the plaintiff, testified:

Direct Examination

That she is the clerk and Acting Inspectress at the Port of San Ysidro and employed by the United States Customs; that on the 27th day of April, 1943, Katherine Wilson was brought in the Customs House to be searched, and that she personally searched her and found a can in her brassiere and two needles and a \$1.00 bill wrapped in a handkerchief in her skirt pocket. (Identified as Government's Exhibits 1 and 2.)

"Mr. Burch. I believe counsel for defendant Kramer has already stipulated that the can found on defendant Wilson contained seven ounces of smoking opium, and I believe that counsel for defendant Wilson is willing to so stipulate. Is that correct?"

Cross Examination

Mary J. Clark, testified: She was employed by the U. S. Government in the Customs Department at the Port of Entry between Tijuana and San Diego; that on the 27th day of April, three women, a white woman, Mrs. Rose Kramer, who sits in the Courtroom there, and the colored woman there, Katherine Wilson, who sits next to her attorney, and another woman, an older colored woman, Gertrude Irvin, were brought in to be searched; she and a female clerk searched them. Mrs. Kramer had on her prohibited currency about \$60.00 in cash money that

(Testimony of Mary J. Clark.)

was not changed into \$2.00 bills. Mrs. Irvin didn't have anything on her. She found in Katherine Wilson's shirtwaist two hypodermic needles; and in her brassiere a can marked Hershey's Cocoa; she did not open the can and did not know what the value of the opium was; she did not question Miss Wilson, just asked her where she got the can and Miss Wilson said a [18] man by the name of Frank had given it to her and she did not know him very well.

K. G. LINDEN,

called as a witness on behalf of the plaintiff, testified:

Direct Examination

He was the Customs Agent in charge of the San Diego Office on April 27th, 1943; that he had occasion to talk to the defendant Wallace in room 130 of the court building with Sergeant Grant of the Customs Control present. At that time he asked Mr. Wallace what connection he had, if any, with the seizure that had been made from the car in which he was a passenger, and if anybody had purchased narcotics in his presence in Tijuana. Wallace said no. He asked him if anyone had spoken to him about purchasing narcotics, and Wallace said no; he asked him if he had ever been involved in any narcotic arrest, and he said no. At that time Mr. Wallace was searched and in addition to some notes

(Testimony of K. G. Linden.)

and memoranda, there was found the sum of \$143.00 on his person, the large part of which was in \$2 bills. He asked Wallace what the purpose of the trip to Tijuana was, and he explained to him that he was trying to purchase a car from Mr. Kramer; that the negotiations for the purchase of the car had started in Los Angeles, and he found it necessary to come to San Diego to see if he could get the additional financing necessary to finance the car. Wallace stated that during the course of the day they had gone to Tijuana, both to try out the car, and to visit Tijuana. Wallace said he had spent in Tijuana possibly \$6 or \$7.00 in food or drinks, and he questioned him relative to his trips to Tijuana, at which time he was accompanied by Mr. Kramer—why he had gone to various places, one particularly, and he stated that Mr. Kramer had driven the car at all times, and that he had merely followed as a passenger. He did not request him to sign a statement. He had been an Agent since 1928 and in the course of his work he had had considerable dealings with the purchase of narcotics. The value of smoking opium fluctuates to some extent, depending upon the supply and demand. In Tijuana they had their seasons. The [19] value would range between \$10.00—possibly \$15.00 or \$18.00 an ounce, depending upon what connections you might have, and how much you wanted. Referring to the statement of Katherine Wilson taken before himself (Defendant's Ex. A); it was started at 7:05 on the evening of the 27th day of April.

(Testimony of K. G. Linden.)

Miss Wilson stated that this opium had been given to her by some man in Mexico whom she had known previously and that she was to bring it over and turn it over to him at the Santa Fe Bus Station about 8:00 p.m. that night; it was then about 20 minutes or a quarter of 8:00, so they sent their men, together with Miss Wilson, to the Santa Fe Bus Station in an attempt to check up this Mexican angle of her statement to see if that was true. And so the taking of the statement was held up until they returned, around 8:30. It was at that time that Miss Wilson changed her story from the original story about the Mexican. The point at which he broke the statement to go to the bus station is as follows:

“Your meeting this man Frank does not agree with the testimony given by other witnesses in this case. Do you want to tell us just who gave you this package at Tijuana, and just what you wanted to do with it?”

That was the first question he asked after they returned. He questioned the defendant Frank Kramer during the course of the investigation. Mr. Kramer was questioned first in view of the fact that he was operating the car at the time the opium was seized. He asked him what he knew about it and Kramer said, “Nothing, that no one purchased any opium in his presence; that the car belonged to a man named Cusack, a resident of Los Angeles, and that he had previously sold Mr. Cusack a car, and at the

(Testimony of K. G. Linden.)

request of Mr. Cusack he was trying to sell this car for Mr. Cusack; and that he knew Mr. Wallace, having previously sold him a car in Los Angeles, and that Mr. Wallace was interested in buying this car; and they were all in Los Angeles, [20] and they were to come to San Diego together to permit Mr. Wallace to go to a bank in San Diego in an attempt to finance the purchase of the car, and that the trip to Tijuana was merely incidental to the trip to San Diego." He did not recall that he asked Kramer to make a signed statement.

Cross Examination

K. G. Linden testified: That he was the Customs Agent in charge on the 27th day of April; he received notification that some people were being held at the Border because some opium and hypodermic needles had been found, and that those people were brought to his office about 5:00 or 5:30. Two men and three women were brought in to his office. The first person he interrogated was Frank Kramer, and Kramer said he did not know anything about it. Then he asked him about the automobile, how this particular Ford automobile got down from Los Angeles and then across the Line. At that particular time he did not investigate to ascertain whether Kramer's story of the car was true. The next person he questioned was Mrs. Irvin—he took a written statement from her. Mrs. Irvin stated that she had seen Katherine Wilson with the car in the car; she did not know where she had obtained it, and

(Testimony of K. G. Linden.)

she had heard no conversation about it. Then he called Miss Wilson in and took a written statement from her. Miss Wilson stated that she got this can from a man named Frank and she was to meet this man at the Santa Fe Bus Depot and deliver the can to him. Mrs. Kramer was never interviewed. Mr. Wallace was the last one to be questioned. He questioned Mrs. Irvin in the absence of Miss Wilson, and she intimated that Miss Wilson knew more about the can than she had said, and had not told the truth, and so when Miss Wilson came back and her story about the man named Frank had not materialized, he again continued questioning her. He did not again call Frank Kramer, but had some conversation with him on the way to the City Jail. Kramer asked him why he was being held, and he said he thought he had [21] sufficient to hold him for the United States Commissioner, and Mrs. Kramer also asked him why she was being held, and he told her the same thing. They held all five of them for the Commissioner's hearing which was held May 4th. After that hearing four defendants were turned loose, and only one defendant was held to the action of the Grand Jury. From the information he had smoking opium sells for about \$15.00 or \$20.00 an ounce. It depends on what the circumstances are, whether cash is being paid, how badly it is needed, and whether or not the buyer is going to take delivery, or where delivery is going to be made. They have had prices, some high, some low, by men who have actually bought it. A seven or

(Testimony of K. G. Linden.)

eight ounce can of opium might run from \$70.00 to \$200.00 for the can. As far as he understood Miss Wilson understood his questions when he interrogated her, and he was not under the impression that he was interrogating a woman who was so drunk or tired that she didn't know what she was talking about. He gave her the benefit of this investigation by asking an officer to see if there was such a man. To some extent he was a little prejudiced and did not have much faith in the fact of somebody having a tin can on the inside of her underwear and concealing it that way and not knowing what was in it. He asked her where it was that she took the package out of her coat pocket and put it in her brassiere and she said, in the automobile, and at the time she was not drunk. She was tired and he presumed wearied.

EDGAR WALLACE,

called as a witness, by and on behalf of the Defendant Kramer, testified:

Direct Examination

That he lived in San Diego and had lived there for about two and three quarters years. He was a professional window washer with a place of business in San Diego. Prior to April 27th, 1943, he knew Frank Kramer, who ran a garage and second-hand automobile business in [22] Los Angeles. And prior

(Testimony of Edgar Wallace.)

to that time he had contacted Kramer and asked him to get a car for him. He had previously tried to finance a transaction in San Diego with the bank. About the 26th day of April, he contacted Mr. Kramer in Los Angeles about a 1941 Ford Sedan and made arrangements with Kramer to come to San Diego and try to arrange for the financing of that car in San Diego. Gertrude Irvin, Katherine Wilson, Mr. and Mrs. Kramer and he and his wife came along in the car. Miss Wilson and Mrs. Irvin were friends of his. On the 27th day of April, he and Kramer went to the Bank of America in San Diego and talked to the manager of the bank, but they were not able to arrange the financing of the car at that time. Then they decided to make a trip to Tijuana. He went to the bank and changed for himself about \$150.00 into \$2.00 bills, about \$50.00 or \$60.00 into \$2.00 bills for Mrs. Irvin, and he got \$10.00 or 20.00 from Mr. Kramer or Miss Wilson or Mrs. Kramer—that was his best recollection; he got something over \$200.00 in \$2.00 bills. Then they got in the car and came to Tijuana. When they got to Tijuana the women got out of the car to do some shopping. He and Mr. Kramer proceeded to go around the town and drink and have something to eat and carouse around in general—wait on the women to finish their shopping, and went from place to place—he didn't know how much time was consumed, and came back there at that particular place—he didn't know what the name of the street was,

(Testimony of Edgar Wallace.)

and the women weren't in sight and they continued to go from place to place. He and Mr. Kramer were together throughout, with the exception of the time that he went across the street, or possibly Kramer went across the street, until they contacted the women. During that time they met a Mexican and used him as a guide, and rode around and wound up in the locality of the old race track. He knew the Mexican slightly. After they met the Mexican they ran across the women and they all went out to the old race track. Then they went to the Mexican's house; he didn't remember whether they all [23] went in the house or not. Then the six of them came back to Tijuana; the women got out of the car to do some more shopping, then they took the Mexican back to the place where they found him and Kramer bought the Mexican a drink. Then they left the Mexican and stayed around until they got ready to leave. Then they got the women, who had bought some stockings and slippers and things of that character and they came back across the Border and were stopped. During the time they were in Tijuana, neither he nor Kramer went in a drug store; they went in barrooms and houses. He did not see Kramer with a tin box or around one. He did not see him purchase any hypodermic needles. He did not see him in or around a drug store. Not at any time did he see the Hershey's tin box, with Kramer or anybody else—he never heard of it—the first time he heard about it was when they were arrested.

(Testimony of Edgar Wallace.)

Cross Examination

Edgar Wallace, testified: That the first stop they made in Tijuana was about in the third block on the main street on the right-hand side; he did not think they stopped before that. They stopped at the Border and he did not know who got out of the car; he did not get out of the car—it was possible some members of the party got out to change some money, but he couldn't say whether they did or not. When they stopped at Tijuana, the ladies got out of the car—they did not make any arrangements about where they were going to meet—they were out to do some shopping, and the assumption was that when they got through shopping, they would be in the same place they left them. There weren't any questions asked. He and Mr. Kramer went off in the car, just no place in particular, just around in general. He thought they had a drink in one of those places as soon as the women got out. He didn't know the names of the streets, it was on the highway. He was not particularly familiar with Tijuana—he had been over there lots of times, and he was able to go where [24] he wanted to go, but unable to direct anyone. He knew where the meat markets were, and the wholesale liquor store, and the race tracks, and things like that. They went with the Mexican over to the old race track—the Mexican had a house over there—they gave him something as a guide—there was no charge or anything. The reason they took the Mexican with them

(Testimony of Edgar Wallace.)

was they went looking for some girls—they engaged him to find some girls. He did not find them any girls because the women got in the car and they had to continue on with the women. The women just happened to see them when they were riding around. Then they went to the Mexican's house, he couldn't say as to who went in the house—he knew Mr. Kramer went in. The reason he went in the house was because he had a bad case of dysentery and walked out to the house on the premises. It was built on the ground with no doors, so he went right in and through the house down to the rest room. It wasn't a modern rest room, so consequently he was outside, and while he was outside, there was someone in the house, and he did not notice who, because it was of no importance to him. They did not sit around with the others in the house afterwards because there was no place to sit and there was nothing important to do there, they just visited a little. Then they came back to the main part of town and brought the Mexican with them. They let the women out of the car. Mr. Kramer bought the Mexican a drink and that was the end of the Mexican. They did not go to look for girls because the women were about ready to come into the car. Mrs. Kramer went to buy a hat, or something like that, so one would get in the car, and then look for the other, and finally they all got together and decided it was time to go. He heard the officers testimony in court and it was the truth. When they went into the different places, they went in to have a drink. Mr. Kramer

(Testimony of Edgar Wallace.)

was drinking with him at times. When he went in alone he possible went in for a drink. He did not know if opium was sold at any of the places he went in. When they were looking for girls they went to [25] the old race track. The reason they had the Mexican along was to find some women, but they didn't stop anywhere to look for girls, because the women of their party came along and they didn't want the women to know. He had been convicted of a felony at Spokane, Washington, in 1913—he went to a farm school. He was sentenced to Folsom in 1926, and in 1931 he was convicted of a felony, and in 1938 he was convicted of a felony.

Redirect Examination

By Mr. Cooper:

The felonies he was convicted of were thefts.

Recross Examination

He was convicted in 1938 of a violation of the Harrison Narcotic Act, and also convicted of selling morphine.

ROSE KRAMER,

called as a witness on behalf of defendant, Frank Kramer, testified:

Direct Examination

That she is the wife of Frank Kramer, and her husband is in the garage and second-hand automobile business; she is a receptionist employed at

(Testimony of Rose Kramer.)

Warner Bros., studio in Los Angeles. She knew that Mr. Kramer and Mr. Wallace were having some transactions concerning an automobile and were coming to San Diego and she came along with them. When they got down to San Diego she decided she wanted to go to Tijuana to do some shopping. Her husband gave her some \$2.00 bills after they got over the Line—she had about \$60.00 in a bank book in her purse. When they got to Tijuana the women started to do some shopping; Mr. Kramer and Mr. Wallace went away. They went from one store to another; sometimes the other women would go in a store with her and sometimes they stayed out. They shopped about three hours, maybe longer. While they were doing their shopping they saw the men and got in the car and rode with them. The Mexican was in the car with them and they rode over by the old race [26] track; she thought they all got out of the car but Miss Wilson. Then they came back to Tijuana, and they left the men and didn't see them again for some time. Sometime later in the afternoon they started back and at the Line they were stopped. While they were in Tijuana she and the two women went in a drug store on the corner on the main street, and while they were in the drug store Miss Wilson asked the Mexican druggist for some hypodermic needles. An American waited on her; she bought some Max Factor's Pancake Make-up and also a sponge to apply it. She saw Miss Wilson buy the needles and put the package in her purse. She saw Miss Wilson talk

(Testimony of Rose Kramer.)

to two colored men for quite some time, and later Mrs. Irvin talked to them. Later in the afternoon she saw Mrs. Irvin talk to a Chinaman. She had walked out of the store and was walking down the street, and Mrs. Irvin was coming toward her, and she heard her call, "Louie," and she turned around and saw her talk to this Chinaman—they stepped into an entrance, she thought it was a saloon. Later she was sitting in the front seat of the car, after the men had come back. Her husband, Mr. Kramer, was in the store and she thought Mr. Wallace was sitting in the back seat. Mrs. Irvin and Miss Wilson were standing on the street in front of the car—a little off, and she saw Mrs. Irvin hand Miss Wilson a package—a Hershey cocoa tin can. She thought Miss Wilson put the can in her coat pocket and that is the last she saw of the package until they were at the Border. She was there at the time Miss Wilson was searched. She did not see the tin can taken off her, but she was sitting outside when the clerk brought it out and gave it to the officer. At no time did she see her husband and Miss Wilson together alone.

Cross Examination

Rose Kramer, testified: That it was around 1:00 or 2:00 o'clock when she saw Miss Wilson buy the hypodermic needles from a Mexican pharmacist; she heard her ask for them and saw the druggist give [27] them to her. She did not think that Gertrude Irvin was an addict, she didn't think anything at all about it. She did not tell her husband

(Testimony of Rose Kramer.)

about Miss Wilson purchasing the needles; she knew Mrs. Irvin was not well and was taking some kind of shots. She saw Mrs. Irvin hand Miss Wilson the cocoa can just a short time before they came across the Border. She was not suspicious of what was in the cocoa can; she never thought anything about it. Mrs. Irvin had mentioned that she was going over to the market and buy some meat and coffee, so she did not pay any attention to it. She never thought anything about it when she saw Mrs. Irvin talk to the Chinaman; she was not suspicious **when** Miss Wilson talked to two colored men in a car—that was her own race. She did not watch her when she was talking to the colored man, she went to another street and up the street. In fact, most of the time the other women walked in back of her. She had no suspicions at all that there was anything wrong either from the purchase of the needles, or the conversation with the Chinaman, or the transaction involving the cocoa can—if she had been suspicious she would have said something about it and wouldn't have come across the Line with them. Miss Wilson or Mrs. Irvin were not friends of hers, she met them through her husband, through this car deal with Mr. Wallace. The two women were not friends of her husband's that she knew of. The only conversation she had with Mr. Linden was that she asked him not to take her to jail—that there was no one home to feed the chickens; she did not remember if Mr. Linden asked her if she

(Testimony of Rose Kramer.)

knew anything about the can of opium or the hypodermic needles.

Redirect Examination

By Mr. Cooper:

She was in jail with Mrs. Irvin and Mrs. Irvin got sick and the nurse had to give her a hypodermic injection.

FRANK KRAMER,

Defendant herein testified: [28]

Direct Examination

That he had been convicted of a felony—burglary in 1927 and that was the only felony he had been convicted of. During the years 1941, 1942 and 1943 he was in the garage and second-hand automobile business. He had a transaction with Edgar Wallace about three or four months ago—he secured an automobile for him and the deal didn't go through, and he had been looking for another automobile for him. He had the 1941 Ford for sale the day that Wallace came to town. Wallace asked him how much money it would take to handle it, and he told him that he thought he could handle it in Los Angeles for \$200.00, but he didn't know about San Diego, and Wallace said if he could handle it for \$200.00 he would buy it, and he went over and met him and came down to San Diego with him. He knew Miss Wilson and Mrs. Irvin before this automobile deal—he knew them through another automobile deal, not Wal-

(Testimony of Frank Kramer.)

lace's; he had known them seven or eight months. He came to San Diego with Wallace and went to the Bank of America, but Wallace was about \$75.00 or \$100.00 short of having enough money and they were not able to make that deal—Mr. Wallace had to get more money. Then they decided to go to Tijuana to do some shopping. He changed around \$50.00 or \$60.00 into \$2.00 bills and when he came back to the United States he had about \$30.00 or \$40.00. Mrs. Kramer spent most of the money—he may have spent around \$10.00. When they got to Tijuana they let the women off some place on the main boulevard to do some shopping and he did not want to go along and shop with them, so he and Wallace drove up a block or two and went to some barroom and they had a drink or two, and then, he thought, they went into two or three more and they met this Mexican—he knew him from over at the old race track, and the Mexican was going to take them down to some houses where there were some Spanish girls, so they put the Mexican in the automobile and they started down the main boulevard and ran into the three women of their party. The women asked them where they [29] were going, and they said they were going over to the old race track. They drove over to the Mexican's house by the race track and stopped. They were going to let the Mexican out there. When they got in there, there was no floor and it was all dirt, and the fleas were buzzing around so they only stayed there

(Testimony of Frank Kramer.)

a minute or two and got out. Then the Mexican decided he wanted to come back to Tijuana and they took him back, and at one of the cross streets there they let the women out, and they drove the Mexican to some place that he wanted a drink, so he took him into a barroom and bought him a drink, and left him there. Then they got in the car and started looking for the three women again, and he thought he saw Katherine Wilson and Mrs. Irvin, and he asked them where his wife was, and they told him she was up the street getting a hat, and he went looking for her and when he came back the other women were gone. Then they finally rounded up everybody, got into the car and went across the Border. When they got to the Border they were stopped and were told that they had been some place where narcotics were sold, and they would like to search the people in the automobile. During that day he was not with anybody else but Wallace and his wife. He did not have any conversation with Miss Wilson about concealing a can of opium. He did not go into a drug store with Wallace while he was down there. He did not purchase any hypodermic needles. He never purchased anything in the way of narcotics or anything else. He did not in any way assist, aid, advise or encourage Katherine Wilson or anybody else to bring any opium or narcotics, or needles across the Line. He did not in any way aid, assist or abet Katherine Wilson or anybody else in possessing, or transporting, or selling or buying any opium in this country over there.

(Testimony of Frank Kramer.)

He did not engage in a code, sign signal or any other way in any agreement with Katherine Wilson or Mr. Wallace or Mrs. Irvin or anybody else to bring any opium across the Line or to sell or conceal or transport any opium after it was brought over here. He did not have any conversation of any kind or [30] character with anybody in that party concerning opium or narcotics of any kind or character. He went in an automobile with these parties from Los Angeles to San Diego for the purpose of perfecting the sale of the car. He did not, on the 27th day of April, obtain \$240 in \$2 bills from the Fifth and Market Street Branch of the Bank of America. The transaction there was with Mr. Wallace. He knew nothing about Katherine Wilson concealing any narcotics until he was informed by the officer when he got over there and the first time he saw the can was yesterday. He didn't have any money to buy opium with and didn't buy it. He knew Mrs. Irvin got some money, but he didn't know whether it was \$50 or \$200.

Cross Examination

Frank Kramer testified: He heard his wife testify on the stand and heard her say Katherine Wilson went into a drug store and purchased some hypodermic needles. He heard her say that Gertrude Irvin handed Katherine Wilson a cocoa can on the main street of Tijuana; also that Gertrude Irvin went into a saloon with a Chinaman. The first time he heard his wife tell this was the day they

(Testimony of Frank Kramer.)

got arrested—right along about that time. He believed she told that story at the preliminary hearing. He didn't get to talk to his wife before they were taken to the County Jail—they were separated. She did not tell him anything about it at Tijuana. He did not know or suspect that Gertrude Irvin was a narcotic addict when they went to Tijuana—he did not know them well enough then. He heard the officers testify about him and Wallace riding around to the various saloons, and to a certain extent their testimony was correct—they drove around there—he didn't know one street from another; he had been in Tijuana before, but there had been long periods between. He had been convicted of one felony—burglary in 1927. He got one year at Terminal Island for impersonating a Federal Officer. The story his wife had told that morning about the purchase of the hypodermic needles she had first told him about the time of the preliminary hearing or after it. She first told him about the cocoa can after they were arrested sometime. She never told it to the officers. The first stop they made as he remembers it on the way to Tijuana was [31] at the Border. He didn't know whether he changed any money at the Border or not. They all spent the night of the 26th of April at the home of Mr. and Mrs. Wallace and the next morning made the trip to the Bank, and then the whole party, except Mrs. Wallace, went over to Tijuana.

REBUTTAL

Direct Examination

K. G. LINDEN,

testified: He had a conversation with Mrs. Kramer on the evening of the 27th day of April in the car driving from the building to the County Jail; he was driving and Mrs. Kramer was seated in the rear of the car with Mr. Kramer and one of the colored women and Mrs. Kramer stated that she knew nothing about the narcotic, the can of opium, and the hypodermic needles.

Testimony closed:

Thereupon the cause was argued by counsel for both plaintiff and Defendant.

The Court: I want to call counsel's attention to the Federal Law, Section 541, which is as I indicated, and not as understood by counsel for the defendant.

“Felonies and Misdemeanors”

“All offenses which may be punished by death or imprisonment for a term exceeding one year shall be deemed felonies. All other offenses shall be deemed misdemeanors.” It is not what is done but what may be done that determines a felony. The only reason I didn't permit the asking of the question is that I didn't know exactly the section, and no proof was made of exactly the section under which the criminal prosecution took place. I didn't want to pursue the matter but I just want to indi-

cate the correctness of my understanding of the law in the Federal Court.

Now, if I had had knowledge what situation would develop here I think I would have preferred to have the matter determined by a jury [32] of 12 men, whose judgment I would prefer always. However, I can't avoid my responsibility. The trial by jury was waived by the Government and the defendants, and I have to determine the matter as best I can.

Now, there is an absolute conflict here in the evidence on some very definite points, and as I say, whether I like it or not, I have to believe one side or the other. Now, I must be perfectly frank. I didn't believe Mrs. Kramer. I don't believe that she took the stand and told the truth, if I have to judge it from my knowledge of human reactions. In the first place she told the officer that she didn't know anything about this opium or these narcotics, or this can, or these hypodermic needles—that she didn't know anything about it at all. Well, if she did not know anything about it, the officer wasn't required to put her through a third degree to get her to tell what she did know. But she is nobody's fool. She is married to a man with a criminal record, which I don't know whether she knew or not, but I presume she did. She wasn't born yesterday, and from her associations I am satisfied that she must have known that it is dangerous for anyone to monkey around with narcotics in this country. Not only is it a terrible crime, and severely penalized, but morally it is a

terrible thing, and she undoubtedly knew it. Everybody knows what the effect of narcotics is. She knew that her husband was traveling around in an automobile. She knew that they had brought some colored people down in Tijuana. Whether she knew that two of them were or had been narcotic addicts doesn't develop. I don't think it makes very much difference. It is rather hard for me to believe that she rode down there with these three colored people just as a pleasure trip—it is very hard for me to believe that statement. It is very hard for me to believe that knowing that she did, she would see one of the women passengers talking with a Chinaman, going into a side entrance, or into a saloon with him, or talking with some colored [33] men, having a can and going across the Border and not declaring it, even though she thought it was just exactly what it purported to be—chocolate. I don't believe it would be natural for her, knowing the danger of having any contraband in the car, to have gone across the Border and said nothing, when there was no declaration of any chocolate, or any narcotics, or anything else.

Now, naturally, she wants to save her husband's skin. I did not believe Mr. Kramer, either, to be perfectly frank. It is human to want to save yourself, naturally, from severe punishment. And I think he told the best story he could, but it didn't convince me, and I don't believe it would have convinced the jury, if we had been fortunate enough to have a jury here. I don't believe that Kramer came down here on any social visit, or

went down to Tijuana with these three colored people on any social visit, or on any such innocent expedition as he contends. Nor do I think the profit on this car, on a car of that size, would be sufficient to justify the things which he frankly admits. I believe that he, and perhaps, he and Wallace—I don't know anything about that—I said yesterday that Wallace might be just as guilty as guilty could be, but that was none of my business. It was simply my business to decide the matter from the evidence, and there wasn't any evidence on which I felt justified in holding Wallace. I am sorry to say that I wasn't very much impressed with Wallace's testimony but he has been in a bad way before. I don't know anything about it; he may be a narcotic addict himself right at the present time, but that wasn't what he was here for; but I don't believe he told the truth about the trip. He may be so dumb that he thought that they were going around on the story as told, to get ahold of some women. Well, there isn't a man here that hasn't been down to Tijuana a good many times, and you don't have to hire a guide to find a prostitute in Tijuana, and you all know that; and I don't believe that they hired any guide to find a Mexican prostitute. I think [34] that they were looking—Kramer was looking for a method of getting some opium, and I believe he got it—either he or Wallace. And I believe the story of this Wilson woman. I think it is a perfectly natural thing for that colored woman to say, "A Mexican handed it to me and asked me to bring it across the Line."

She had to have some explanation and I don't have any doubt that her first instinct was to lie about it. But I believe she came through with the truth when she said that Kramer handed it to her. I don't know who it was for; maybe it was for Mrs. Irvin and Wallace; maybe it was for commercial purposes, but I have to believe someone, and I am frank to say I did believe the Wilson woman. I believe her story ranks much truer than the stories of either of the Kramers or Wallace, insofar as he told it, but it may be that Wallace was just dumb enough to think that they were running around Tijuana as the officers Buncastle and Scott indicated, going from one door to another and into side entrances. Now, when a person wants to get a drink he doesn't sneak into side entrances to get a drink, he goes in the front door and orders what he wants. There is no law against anyone taking a drink. Nor do I believe that if a fellow wants to get a woman and he has hired a guide for that purpose, that he would take the guide and go right back on the main street of town. That just doesn't happen. If a fellow is going to slip one over on his wife he goes down the back street, and when he gets through he comes back and keeps his mouth shut.

Nor do I think the story held water—they got rid of the women; if that is what they were after they would have gone down and got it after they got rid of the women the second time. I don't know where they got this opium, but I am satisfied that

Kramer got it somewhere, and I am satisfied that he gave it to Wilson, and I am satisfied that Wilson brought it across, and I am satisfied that Wilson, when she brought it across, knew what it was; and I am satisfied that Wilson knew what she had when she brought it across. [35] Now, Mrs. Kramer is not being prosecuted here, and I have released Wallace. I, frankly, from the evidence believe that that was the entire object of the trip. I don't know who was to get the opium, or who was to pay for it, or what. I don't believe that Kramer was doing it for nothing; I believe that he did enter into a conspiracy with Katherine Wilson to bring that opium across here. I find the Defendant Kramer guilty on the first count, on the second count and on the third count. He is remanded to the custody of the United States Marshal.

The Court: Mrs. Kramer, will you come forward. please? If I let your husband go on his own recognizance between now and Monday morning at 9:00——

Mr. Cooper: May I say a word about that, your Honor? I am to be in a Justice Court for sentence in Gardenia at 9:00 o'clock,

The Court: Tuesday morning at 10 minutes to 10:00

Mr. Cooper: All right, sir.

The Court: Will you stay with him constantly, and never let him out of your sight, if I let him go until that time? Mrs. Kramer: Yes.

The Court: Do you so promise?

Mrs. Kramer: I will.

The Court: Then, I don't want him to come into San Diego County, I don't want him to go anywhere near the Mexican border line, within 100 miles of the Mexican border line, I don't want him to have contact with any narcotic men, or men who have any dealings with narcotics, or addicts, between the time I release him here today, and the time that he comes in court for sentence. I may not be doing right, but I feel that under the circumstances, he should possibly be given an opportunity to prepare himself for the serving of a sentence, and to arrange his business. I am not going to refer the matter to the Probation Department, as I have indicated to you—that is contrary to my practice in those cases. And if Mr. Cooper [36] and Mr. Shreve will see that he gets out of town within the next two hours, and he doesn't come back, I will feel very much better about it.

Mr. Cooper: Would your Honor then sentence Miss Wilson at the same time?

The Court: No, I haven't any connection with the case so far as Miss Wilson is concerned. It was put on a week from Monday, for what reason, I don't know. I would have just as soon have sentenced her at the same time.

Mr. Cooper: I think I can arrange to change that, by Mr. Appel.

The Court: If she comes in voluntarily at 10 minutes to 10:00 on Tuesday and asks to be sentenced, I will sentence her then. I will be very glad to take care of the whole matter at one time.

Mr. Cooper: That was referred to the Probation Office—that was referred.

The Court: Only for presentence report. I wanted to get her record.

Mr. Cooper: I understand that the Probation Office made a favorable report, and I understand your Honor says that he doesn't give probation.

The Court: It has been my practice, however, that doesn't interfere with my taking into consideration what the Probation Officer has to say.

The Court: You have the conditions under which he is released on his own recognizance, and with his consent, then, and the consent of his counsel, the matter of sentence will come up at 10 minutes to 10:00 next Tuesday morning in my courtroom in the Federal Building in Los Angeles.

Mr. Cooper: You understand that thoroughly?

The Defendant: I understand to be there Tuesday morning at 10:00 o'clock.

Mr. Cooper: 10 minutes to 10:00 next Tuesday morning.

And thereafter on the 11th day of October, 1943, and within the time [37] required by law, the defendant served his notice of intention to move for a new trial, in the following form, to-wit:

In the United States District Court, In and For the
Southern District of California, Southern
Division.

No. 6776-Cr.

UNITED STATES OF AMERICA, Plaintiff,

vs.

KATHERINE WILSON, FRANK KRAMER,
and EDGAR WALLACE, Defendants.

MOTION TO VACATE AND SET ASIDE VER-
DICT OR DECISION AND GRANT A NEW
TRIAL.

Comes now the Defendant Frank Kramer, in the
above entitled action, and moves the Court to vacate
and set aside the verdict and decision heretofore
rendered in this action and grant him a new trial
upon the following grounds, to-wit:

I.

That the verdict and decision is contrary to the
law.

II.

That the verdict and decision is contrary to the
evidence.

III.

That the verdict and decision is contrary to the
law and the evidence.

IV.

Errors of law occurring during the trial of the case, and duly excepted to by the Defendant Kramer.

V.

Said motion to be made upon the records and files of this action together with the phonographic record taken at the time of trial.

.....

John S. Cooper,
Attorney for Defendant,
Frank Kramer.

.....

George H. Shreve,
Attorney for Defendant,
Frank Kramer.

Dated: October 11th, 1943. [38]

[Title of District Court and Cause.]

AMENDMENT TO MOTION TO VACATE AND
SET ASIDE VERDICT OR DECISION
AND GRANT A NEW TRIAL

Comes now the defendant, Frank Kramer, by leave of the trial Judge, the Honorable Ralph E. Jenney, first had and obtained, and files this, his amendment to his motion heretofore made to vacate and set aside verdict or decision and grant a new trial; and particularly specifying wherein the verdict and decision is contrary to the law and contrary to the evidence, states:

Count I.

Count I specifically charges Katherine Wilson, Frank Kramer and Edgar Wallace did on or about the 27th day of April, 1943, "then and there knowingly, wilfully, unlawfully, feloniously and fraudulently import and bring into the United States certain narcotics in violation of 21 U.S.C. 174.

This section is a companion section of section 173 to 178 of the same Code and is the penalty section. The section itself reads: "If any person fraudulently or knowingly imports or brings any narcotic drug into the United States or any territory thereof contrary to law or assists in so doing or receives, conceals, buys, sells or in any manner facilitates the transportation, concealment or sale of any such narcotic drug after being imported or brought, etc."

Under the decision of *Palermo vs. United States*, 112 Fed (2) 522; this section which provides the penalty for the acts forbidden [39] by section 173, is a specific section not related to other custom laws and absolutely forbids the importation of smoking opium and provides separate offenses for every act done in connection therewith and under the law, the importation takes place as soon as the international line is crossed.

Under the evidence of the Government in this case, the facts showed that Katherine Wilson with the other defendants, was stopped at the International line by customs officers; that after some members of the party had made some declarations of goods that they purchased in Mexico, the cus-

tom officers took all the five parties into the custom house where they were searched, and there the can of opium together with two hypodermic needles was found upon the person of Katherine Wilson.

The defendant Kramer drove the automobile Katherine Wilson was riding in and Katherine Wilson testified that Kramer had given her the opium and the narcotic needles in Tijuana. As the importation takes place the minute the narcotics cross the boundary line, certainly Frank Kramer did not import the narcotics. He was not specifically charged with "assisting" in so doing, as he could have been, so therefore as a matter of law, he was not specifically guilty of the offense charged in Count I.

Count II.

In this count, Kramer is charged together with Katherine Wilson and Edgar Wallace as follows: "that they did then and there knowingly, wilfully, unlawfully, feloniously and fraudulently receive, conceal, buy, sell and facilitate the transportation and concealment after importation of a certain preparation of opium***as said defendants then and there well knew had been imported into the United States of America contrary to law."

Under the evidence of the Government in this case, the evidence shows that Katherine Wilson had the opium concealed upon her person and that as soon as they were stopped at the Line she [40] was searched and the opium was taken from her person.

Under the law, some act must be done by the

defendants or some of them, other than the act of importation, as this provision of 174 is separate and distinct from the importation and provides for an act done after importation. The authorities for this point are:

Pong Wing Quong vs. U.S., 111 Fed (2) 751;

Palermo vs. U.S., 112 Fed (2) 922;

Krench vs. U.S., 42 Fed (2) 354;

Kurczak vs. U.S., 14 Fed (2) 109.

In each of these cases the narcotics or liquor had already crossed the International Line, and after they crossed the Line, the defendants in each case did some act to conceal or facilitate the transportation of or otherwise the prohibited article. The best case being the case from the 9th Circuit;—Pong Wing Quong vs. U.S. 111 Fed (2) 751.

In that case, after the drugs were in the customs house, the defendant placed a false custom sticker on the trunk so that the trunk could pass the custom officials inspection. So, therefore, as a matter of law as to this count, the defendant is not guilty as a matter of law, because he did not do any act to aid, assist or abet in the concealment or transportation of said prohibited drugs.

Count III.

This count charges a conspiracy of the three defendants to do the act set forth in counts I and II.

If the Government's evidence is to be believed regardless of the denials of the defendants, of necessity in order to convict the defendants of the con-

spiracy "that although it is proper for Congress to create separate and distinct offenses growing out of the same transaction where it is necessary in proving one offense to prove every essential element of another growing out of the same act, conviction of former is a bar to prosecution for latter." Therefore, [41] the conviction of the conspiracy and the substantive offenses in this case are inconsistent and cannot stand.

The defendant also states that since this decision of the Court in this action that he has discovered evidence which he did not know and could not have discovered by reasonable diligence beforehand. This evidence is set forth in the affidavit of Frank Kramer hereto attached, marked Exhibit A, incorporated in and made a part of this motion. And, as set forth therein, and as clearly shown during the trial of this case, the defendant from the hearing before the Commissioner was led to believe that Katherine Wilson would testify that a Mexican had given her the can of opium and that the defendant knew nothing about it, and that in so far as the hypodermic needles are concerned, the only information that he had was the information that he had received from his wife; that she had seen Katherine Wilson buy the same. That after Mrs. Kramer had testified and the Court made a statement in substance and effect that he did not give credence to Mrs. Kramer's testimony, and that if Mrs. Kramer had known these things she should have told her husband before the car crossed the Line; That Mrs. Kramer became very much hurt

and decided to try, if possible, to get evidence to substantiate her story. She went to Tijuana to see the druggist in the drug store there; that while in the drug store at Tijuana on the 9th day of October, according to her statement, she saw the druggist who waited upon her, but did not see the druggist who waited upon Katherine Wilson; that the druggist who waited upon her told her that he recognized her as having been in his store, but that he had no recollection of any transaction concerning hypodermic needles, and that under the law of Mexico, that no record was kept of the sales of such articles; that a child could buy them, and therefore, there was no record in the store of this transaction. Frank Kramer then requested Horace Appel, the attorney for Katherine Wilson to bring Katherine Wilson to Horace [42] Appel's office so that Frank Kramer could talk to her, and what took place at this interview, among other things, is what is set forth in the affidavit of Frank Kramer.

As to whether or not this testimony is newly discovered is certainly a debatable question as a matter of law, but the fact remains that if Katherine Wilson did admit after the trial that she purchased the hypodermic needles, as testified to by Mrs. Kramer, Katherine Wilson, being an accomplice and her testimony being subject to close scrutiny, certainly this would be very strong testimony to discredit all the rest of her testimony in view of the fact that she stated that Frank Kramer gave her both the can of opium and the narcotic needles, and the can of opium was found concealed

under her clothes, and the narcotic needles were found in the pocket of her shirt waist.

Dated: October 13th, 1943.

Respectfully submitted,

JOHN S. COOPER,

Attorney for Defendant,

Frank Kramer.

GEORGE H. SHREVE,

Attorney for Defendant,

Frank Kramer. [43]

EXHIBIT "A"

[Title of District Court and Cause.]

No. 6776-Cr.

AFFIDAVIT

State of California

County of Los Angeles—ss.

Frank Kramer being duly sworn deposes and says: That he is the defendant in the above entitled action; that his testimony now if sworn would be the same as his testimony sworn to on the trial of this action; That after the case was decided by the Court and the Court made the statements that it did concerning the testimony of Mrs. Kramer, that Mrs. Kramer felt very much hurt that the Court did not believe her statement, and told defendant that she was going to Tijuana to see if she could find the druggist who sold Katherine Wilson the needles; that upon her return she informed defendant that the druggist who waited on

Katherine Wilson was not in the store, but that the druggist who waited on her was, and the druggist told her that he remembered her but he did not remember any transaction whereby the hypodermic needles were sold, and that there would be no way of finding this out from the records of the drug store as the law of Mexico did not require records to be kept of such transactions, and that a child could buy hypodermic needles in Mexico. As the defendant had such confidence in his wife, and knowing the attorney for Katherine Wilson, he requested Horace Appel, the attorney for Katherine Wilson, to have Katherine Wilson in his office, in order that the defendant might talk to Katherine Wilson in the presence of her attorney. At this interview, which took [44] place on the 11th day of October, among other things the following took place:

“I, Frank Kramer went to the office of Horace Appel; he, Horace Appel had Katherine Wilson come to his office. Horace Appel said to Katherine Wilson: “Frank here says you did not tell the truth. I don’t want to have anything to do with sending an innocent man to jail.” I, Frank Kramer, then asked Katherine Wilson why she said I gave her the can and needles; that she knew Gertie Iryin gave her the can and that she herself bought the needles; that the druggist that sold them to her could testify. She, Katherine Wilson said: “Yes, I bought the needles but you gave me

the can." I said: "You know that Gertie Irvin gave you that can, not me." and she said "Gertie Irvin gave you that can and you gave it to me."

Affiant says that he could not with reasonable diligence have produced this testimony at the time of trial.

FRANK KRAMER

Subscribed and sworn to before me this 13th day of October, 1943.

EARL F. CRANDELL

Notary Public in and for said County and State.
[45]

Thereafter on October 16th, 1943, and within the time allowed by law the following proceedings were had upon a motion for a new trial, judgment and sentence:

San Diego, California,
Monday, October 18, 1943
11:45 A. M.

The Clerk: No. 6776, United States vs. Katherine Wilson and Frank Kramer. Motion for a new trial as to Defendant Kramer. Sentence as to Defendant Wilson.

Mr. Cooper: The defendant is here and desires to proceed.

The Court: I have gone over your petition for a new trial very carefully, and I am prepared to rule, unless you have something further which you

have not called the Court's attention to, but to which you would like to call the Court's attention.

Mr. Cooper: I could elaborate on the subject, if you please, as far as that is concerned; just certain phases of the evidence, that would be the extent of it. So far as the authorities are concerned, after again reviewing the authorities, I find no additional authorities that lay down any stronger position than the authorities I cited to your Honor, but I do find in some other cases some reasoning that would verify those authorities, sir.

The Court: I recognize that there are quite a number of authorities. Now, as I understand it, let's eliminate the questions of law and discuss the questions of fact. The testimony, at the time of the trial, given by the Defendant Katherine Wilson was that she received certain hypodermic needles and a can of opium from the Defendant Kramer, and was told to put them away and put them away good. The indications in the affidavit of Mr. Kramer, and the indications in the testimony of Mrs. Kramer at the time of the trial were that the Defendant Katherine Wilson actually bought the needles in a drug store in Tijuana, and that Mrs. Kramer saw her buy them. At the time of the trial, the Defendant Katherine Wilson said that they were [46] handed to her by the Defendant Kramer. There was no attempt, on cross examination, at the time, nor did I think of it at the time, to bring out whether or not she had possibly bought the needles, handed them to Mrs. Irvin, and Mrs. Irvin had given them to Kramer, and Kra-

mer had handed them back to her with the can of opium. That I don't know. But, as I understand it, from the affidavit, the Defendant Katherine Wilson now admits that she did buy those needles in the drug store. Is that correct?

Mr. Cooper: That is the affidavit of Mr. Kramer, if your Honor please. The statement was made in the presence of Katherine Wilson and Katherine Wilson's attorney, Mr. Horace Appel.

The Court: Now, would the Defendant Wilson be willing to be sworn and testify as to that one point? Just come forward and be sworn, please.

Mr. Carter: I might say, if the Court please, I expected the matter of Katherine Wilson to be on the calendar at 10:00, and I planned to take an affidavit from her.

The Court: I recognize the fact that we had some confusion about that. After all, I wanted to treat this whole thing together, and I think it was as much my fault as anyone.

Mr. Appel: I called this morning to ascertain whether it was 10:00 or 11:45.

The Court: I think there was a little confusion.

Mr. Appel: I understood it was 11:45, however.

KATHERINE WILSON

called as a witness, being first duly sworn, was examined and testified as follows:

The Clerk: State your full true name.

The Witness: My name is Katherine Wilson.

Examination

By the Court:

Q. You understand, Miss Wilson, that you don't have to [47] testify here at all. I want to take your testimony, however, in connection with this motion for a new trial. I also want to take your testimony here in connection with any possible application, past or future application, for probation. One point that I want to be satisfied on is this: At the time of the trial you testified that you received together, from the Defendant Kramer, a can, and on the side of it, or with it, was a little package, very small package, an inch and a half or less than an inch and a half square, containing some hypodermic needles; that you just put those in your pocket together? A. Yes, sir, I did.

Q. Now, in this affidavit of Mr. Kramer he says that you told him, in the presence of your attorney, that you had bought those hypodermic needles at a drug store in Tijuana. Is that correct?

A. No, I didn't tell him that. He kept after me and kept saying, "You bought those needles." And I said, "Yes, I bought them." But just to make him leave me alone. He just kept after me, and he came out to my house on Saturday night,

(Testimony of Katherine Wilson.)

he and his wife, and they both tried to make me say Gertie give me the can. He said, "You can come and live with me." And I said, "No, I am not going to do that, because what I tell is the truth. I am not going to perjure myself for you."

Q. Your testimony at the time of the trial is correct? A. Absolutely.

The Court: You may cross examine.

Cross Examination

By Mr. Cooper:

Q. You say now that in the presence of your attorney, Frank Kramer, the defendant, your co-defendant, said to you, in substance and effect, "You know that you bought those hypodermic needles, and you know the druggist you bought them from," or words [48] to that effect. Then you said to him, "Well, I bought the needles." Is that right?

A. Yes, I said that, because he kept after me.

Q. That is what you stated to him?

A. That is what I said to him. But I never signed no papers, or nothing, that I bought them.

Q. Now you are referring to a Saturday?

A. Yes.

Q. That Saturday night or Sunday, whatever the day was that you refer to, was before you were called as a witness in San Diego?

A. No, it wasn't. I was supposed to be there, and they told me, "There is no need of you going down there on the 6th, because you are guilty, you plead guilty."

(Testimony of Katherine Wilson.)

Q. I am speaking about before you testified. That was before you testified in San Diego?

A. Yes, it was.

Q. All right.

The Court: Now, let me see. I don't know if I understand it. You mean at this time that you told Mr. Kramer, in the presence of Mr. Appel—

Mr. Cooper: No.

The Witness: No.

Mr. Cooper: That conversation was just last Monday.

The Court: Since the trial?

Mr. Cooper: The conversation she is referring to wherein there was a conversation about Gertie handing the can to Frank Kramer and Frank Kramer handing the can to her—I am asking her if such a conversation wasn't had before you went to San Diego and testified as a witness?

The Witness: Yes, it was the Saturday before I went there.

Q. By Mr. Cooper: All right. Now——

A. Why would they want me to come and live with them if he [49] wasn't guilty?

The Court: Never mind about that.

The Witness: I don't understand it.

Q. (By Mr. Cooper): Now, in that conversation which was before you went to San Diego and testified as a witness, did you say to Mr. and Mrs. Kramer, in substance or effect, that Gertie gave the can to Frank Kramer, and Frank Kramer gave the can to you? A. No, I didn't.

(Testimony of Katherine Wilson.)

Q. All right. Now, when you were talking in Mr. Appel's office, after the trial in San Diego, that is, last Monday, when you were talking in Mr. Appel's office on that day, at that time Mr. Frank Kramer said to you, in substance or effect, that you had told him and his wife that Gertie gave the can to Frank Krmaer, and Frank Kramer gave the can to you? A. No, I didn't.

Q. Well, didn't Frank Kramer say that to you?

A. He said that to me, but I didn't say it to him.

Q. Did you deny or affirm that fact when he said it?

A. I said, "You know you gave me the can."

Q. I see.

Mr. Cooper: That is all that I have to ask the witness.

The Court: I have no further questions.

Mr. Appel: That is all.

Mr. Carter: There are other facts which could be elicited as to the Defendant Kramer's attitude towards this witness, subsequent to the verdict. But I don't think it would add anything to what is in the record.

Mr. Cooper: As far as that is concerned, Mr. Carter, I am perfectly willing to admit that. The question is Mr. Appel and Mr. Kramer can both state the fact that——

The Court: I don't care to go into that. So far as I am concerned, I just wanted that one point cleared up. It is perfectly [50] natural for a man

(Testimony of Katherine Wilson.)

to go after anybody after he has been convicted. That is just human. And I don't want to go into that.

Mr. Cooper: I was going to say the conversation was had in the presence of her own attorney. So, if there is anything improper about that, I can't conceive it.

Mr. Carter: I was referring to other conversations. But I don't think it would add anything.

Mr. Cooper: What I have to say about that——

The Court: You may step down.

(Witness excused.)

(Further argument on the motion reported but not transcribed.)

The Court: Well, I don't think I care to hear any reply by the Government. I have been over this so many times. I disagree with your interpretation of the law. The motion for a new trial, the motion to set aside the verdict, and the motion to vacate are all denied.

Mr. Cooper: If your Honor please, I respectfully desire to note an exception to your Honor's ruling.

The Court: Yes, surely.

Mr. Cooper: Didn't your Honor, at the time that I moved for a directed verdict, grant me an exception upon that motion there? Does your Honor remember?

The Court: I think so.

Mr. Cooper: If you didn't, would it be allowed?

You know, that is the only exception I could take, don't you?

The Court: Yes. If you didn't ask for it——

Mr. Cooper: It would raise the same point, I believe.

The Court: If I can do it, I would be willing to do it now. I don't know that I can. My memory of it is that you took an exception and that I allowed the exception. That is my recollection of the record.

Mr. Cooper: My recollection is that you stopped me and you [51] stated, "You can have your exception."

The Court: Well, I am very, very careful about that. If a man doesn't take an exception both at the close of the Government's case, and, again, at the time of the close of his own case, I invariably remind him of it and give him an exception. It has happened in this courtroom dozens of times. I think you protected your record on that in the record.

Mr. Cooper: I know, as far as the trial is concerned, that is the only exception on earth I could have had, because as far as the rulings on the evidence are concerned, your Honor ruled in my favor throughout, and I couldn't except to rulings in my favor.

The Court: Well, I think there were one or two exceptions, and I think they were allowed.

Mr. Cooper: All right, your Honor. Thank you.

The Court: The Defendant Kramer will come forward for sentence. It is the sentence of the

Court that on Count 1 of the indictment you serve a term of two years in an institution of the penitentiary type to be chosen by the Attorney General of the United States.

The Defendant: If your Honor please——

Mr. Cooper: Just a second, until the Court gets through.

The Court: On Count 2, it is the sentence of the Court that you serve a term of two years in an institution of the penitentiary type to be chosen by the Attorney General of the United States; the sentence to run concurrently with Count 1. On Count 3, it is the sentence of the Court that you serve a term of two years in an institution of the penitentiary type to be chosen by the Attorney General of the United States; the sentence to run concurrently with the sentence on Count 1. I have been very lenient in this matter. I am ordinarily extremely severe under circumstances such as here exist.

Mr. Cooper: Your Honor, the defendant wanted to say something. [52] May he say something now?

The Court: Yes.

The Defendant: Well, I can't talk.

Mr. Cooper: What is it you say, Mr. Kramer?

The Court: He says he can't talk.

Mr. Cooper: I can talk for him, if your Honor please. I presume what he wants to say is he is tubercular.

The Defendant: No, I don't want to say that.

Mr. Cooper: I made that representation before.

The Court: I think he will be better off in the penitentiary than he would be running around, so far as his tuberculosis is concerned. If he behaves himself he will be cured by the time he gets out.

The Defendant: I know I am not guilty. I wanted to say something.

Mr. Cooper: Your Honor, so far as I am concerned, I have prepared a notice of appeal in ordinary form, and, of course, the question of the sentence I couldn't type in, because I didn't know what the sentence was. I don't like, as a rule, to hand papers to the clerk of the Court unless they, at least, look nice and proper.

(Further discussion between Court and counsel reported but not transcribed.)

The Court: Well, ordinarily I would think it would be pretty small, but I don't believe the defendant is going to run away, and I believe the amount of the bond should not be other than sufficiently high to assure the defendant's presence in court when he is needed. The bond on appeal will be fixed in the amount of \$2,500.00.

Mr. Cooper: There is one additional fact, if your Honor please, as far as the reporter is concerned. The reporter has already given me an estimate on what the transcript of the evidence will cost the defendant. [53]

(Further discussion between Court and counsel reported but not transcribed.)

Mr. Cooper: If your Honor please, can we have 90 days in which to prepare the bill of exceptions,

under those circumstances? I have an order to that effect.

The Court: How long a time?

Mr. Cooper: 90 days. As soon as we get the transcript, I am going to give it to your Honor to read, and then I will prepare the bill of exceptions.

The Court: Why do you need 90 days?

Mr. Cooper: They told me I wouldn't get it for three to four weeks. That is what the reporter told me.

The Court: That is all right with me.

Mr. Cooper: I will leave this order, then, to be signed now. That would only be 60 days beyond 30. [54]

DEFENDANT'S EXHIBIT A

Statement of Katherine Wilson at 130 Custom House, San Diego, Calif. on April 27th, 1943 at 7:05 P.M. in the presence of Sgt. K. Grant, Inspector R. Scott and Customs Agent K. G. Linden.

Q. What is your name.

A. Katherine Wilson.

Q. What is your address.

A. 797 East 14th Street, Los Angeles.

Q. Miss Wilson you were arrested today about 4:30 P.M. after having entered the U. S. from Tijuana and there was found on your person a package containing a can in which there was found approximately seven ounces of smoking opium. We want to question you on this subject to find where you obtained the package containing the opium and

advise you that anything you say may be used against you. Are you willing to tell us just how you obtained this package?

A. A fellow that I hadn't seen for a long time by the name of Frank, I met in Tijuana and he asked me how long I was going to be down. I told him I didn't know, we might go back tonight or tomorrow. He asked me if I would do him a favor. I told him I would if I could. He said would you take a package across for me. I said yes I would take it. I put the package in my coat pocket. He said he wasn't going back just yet. I asked him how I was going to get the package to him and he said that I should meet him at the Santa Fe Bus Station tonight at 8:00.

Q. Who was with you when you met this Frank?

A. The ladies was with me but they walked on down the street while I was talking to him.

Q. By ladies you mean Mrs. Irvine and Mrs. Kramer, is that right?

A. That's right. They didn't know nothing about it.

Q. How long have you known this Frank?

A. I imagine about four or five years. [55]

Q. Do you know what he does for living?

A. Only when I knew him in Los Angeles he was working hard on P.W.A. digging ditches.

Q. When was the last time you saw him?

A. About three months ago in San Diego when I was there.

Q. What do you do for a living?

A. I did housework and cooking, I worked for one family ten years but I haven't been able to work for two years. The doctor won't O.K. me. I have a fallen kidney.

Q. How did you come to drive down from Los Angeles to San Diego with Mr. Kramer?

A. He came around to my house on Sunday and said he had a car to sell in San Diego—he was going to sell it to Mr. Wallace. As Mrs. Irvine and I were talking about going down to San Diego to visit Mrs. Wallace, he said we could drive down with him. He came around last night in the evening about this time, but we didn't leave right away. Mrs. Kramer had dinner with Mrs. Irving and I. Mr. Wallace came along later and we all left together.

Q. Where did you go when you reached San Diego?

A. To Mrs. Wallace's it was late and we went to bed.

Q. Who else stayed at Mr. Wallace's?

A. Mrs. Irvine, Mr. Wallace and the Kramers. It was late and we had no place to find a room.

Q. What time did you leave for Tijuana today?

A. I guess it was around noon.

Q. What were your plans at that time?

A. Look around, shop a little, buy a few drinks and come back.

Q. About what time was it when Frank gave you this package containing the opium and the hypo needles?

A. I don't know, I didn't know what time it was when we went across there. [56]

Q. Your meeting this man Frank does not agree with the testimony given by other witnesses in this case. Do you want to tell us just who gave you this package in Tijuana and what you were to do with it.

A. Frank Kramer gave me the package.

Q. Who was present when he gave it to you?

A. He was standing outside the car and everybody else was in the car.

Q. Where in Tijuana did this take place?

A. On the main street near the long bar.

Q. Just what did Kramer say to you?

A. He just said put this in your dress and take it across that's all, but he didn't offer me nothing to take it across.

Q. And did you put it in your dress at that time?

A. No, I stuck it in my pocket.

Q. Was everyone but Kramer in the car when you put the package in your pocket?

A. I'm pretty sure they were.

Q. When did you take it out of your pocket and put the package in your brassiere?

A. He and I were outside the car when he first gave it to me, then I got into the car and we started down the street. We must have rode about half a block and then I put the package in my brassiere.

Q. Who else was in the back seat when you put the package in your brassiere?

A. Gertie and Mr. Wallace, Mrs. Kramer was sitting up front with her husband.

Q. Who knew that Kramer had given you this package?

A. I don't know whether anybody knew he give it to me, he never said nothing.

Q. What had Kramer said about your taking the package across before [57] he gave it to you?

A. He said, here put this in your kick. Then Mrs. Kramer said, is Frank going to buy you some stockings, said, I don't know, he said he was.

Q. Was he going to buy you some stockings because you were carrying this package across the line for him?

A. No, I think he meant for me to pay him back for the stockings.

Q. Did you ask Kramer why he asked you to carry the package instead of Mrs. Kramer?

A. No, I didn't ask no questions at all. We were talking and Mrs. Kramer said that she had no brassiere on and I said that I couldn't go without one. Mrs. Kramer said she didn't like to go without one, but didn't have one on today.

Q. What arrangements were made to deliver the package to Kramer on this side?

A. I didn't make no arrangements, I guess if I got it across I was going to give it to him.

Q. What did he tell you to say if the customs officers found the package?

A. He didn't say anything.

Q. Think carefully now and see if you can remember who saw him give you the package?

A. I am not positive that anybody saw him give it to me.

Q. Was there any conversation about the package or what was in it after he gave you the package and you put it in your pocket?

A. There was a lot of talk but nobody said a word about the package.

Q. There were two needles found in the package with the opium, did you notice those when Kramer gave you the package?

A. I put the package in my pocket. I felt in my pocket and looked and saw the needles and took them out of my coat pocket and put them in the pocket of my blouse.

Q. Are you familiar with hypodermic needles?

[58]

A. I have seen them in the hospital.

Q. What did you think when you saw these hypo needles?

A. Nothing. I know a lot of people use them for adrenalin and things like that.

Q. Are you addicted to the use of narcotics?

A. No.

Q. How long have you known Mr. Wallace?

A. A good many years in San Diego, Los Angeles and in Washington.

Q. Have you ever been arrested before?

A. Yes, but no convictions.

Q. On what charge?

A. Offer, but they dismissed it.

Q. And this man, Frank Kramer, who was in the car with you people this afternoon is the man

who gave you the package containing the opium and the needles in Tijuana and asked you to bring it across the line—is that right? A. Yes.

Q. Is there anything you wish to add to this statement?

A. Nothing else that I know of.

Q. How many times have you been to Tijuana before this?

A. I have been to Tijuana lots of times but not with them.

Q. And you will be willing to testify in court that Frank A. Kramer is the man who gave you the package of opium and needles in Tijuana that was seized on your person this afternoon at San Ysidro?

A. I guess that is the only thing I can do—nobody else did it.

Q. Do you solemnly swear that this statement is the truth, the whole truth and nothing but the truth So Help you God.

A. I swear—that's right he gave it to me.

I have been given an opportunity to read the foregoing statement consisting of four pages and to make any changes that I desire and this statement was made of my own free will without any threats or promises.

KATHERINE WILSON

Subscribed and Sworn to Before Me This 27th day of April, 1943.

F. G. LINDEN,

Customs agent. [59]

SPECIFICATIONS OF ERRORS

The defendant appellant now specifies the errors upon which he will rely upon appeal:

I.

The decision and judgment as to Count 1 is contrary to law and the evidence in that said evidence is insufficient to sustain or justify the judgment. Count 1 specifically charges Katherine Wilson, Frank Kramer and Edgar Wallace did on or about the 27th day of April, 1943, "then and there knowingly, wilfully, unlawfully, feloniously and fraudulently import and bring into the United States certain narcotics in violation of 21 U.S.C. 174."

This section is a companion section of section 173 to 178 of the same Code and is the penalty section. The section itself reads: "If any person fraudulently or knowingly imports or brings any narcotic drug into the United States or any territory thereof contrary to law or assists in so doing or receives, conceals, buys, sells or in any manner facilitates the transportation, concealment or sale of any such narcotic drug after being imported or brought, etc."

Under the decision of *Palermo vs. United States*, 112 Fed. (2) 522; this section which provides the penalty for the acts forbidden by section 173, is a specific section not related to other custom laws and absolutely forbids the importation of smoking opium and provides separate offenses for every act done in connection therewith and under the law, the

importation takes place as soon as the international line is crossed.

Under the evidence of the Government in this case, the facts showed that Katherine Wilson with the other defendants, was stopped at the International Line by customs officers; that after some members of the party had made some declarations of goods that they purchased in Mexico, the custom officers took all the five parties into the custom house where they were searched, and there the can of opium together with two hypodermic needles was found upon [60] the person of Katherine Wilson.

The defendant Kramer drove the automobile Katherine Wilson was riding in and Katherine Wilson testified that Kramer had given her the opium and the narcotic needles in Tijuana. As the importation takes place the minute the narcotics cross the boundary line, certainly Frank Kramer did not import the narcotics. He was not specifically charged with "assisting" in so doing, as he could have been, so therefore as a matter of law, he was not specifically guilty of the offense charged in Count 1.

II.

The decision and judgment as to Count 2 is contrary to the law and the evidence in that the evidence is insufficient to sustain or justify the judgment.

In Count 2, Kramer is charged together with Katherine Wilson and Edgar Wallace as follows: "that they did then and there knowingly, wilfully, unlawfully, feloniously and fraudulently receive,

conceal, buy, sell and facilitate the transportation and concealment after importation of a certain preparation of opium * * * as said defendants then and there well knew had been imported into the United States of America contrary to law.”

Under the evidence of the Government in this case, the evidence shows that Katherine Wilson had the opium concealed upon her person and that as soon as they were stopped at the Line she was searched and the opium was taken from her person.

Under the law, some act must be done by the defendants or some of them, other than the act of importation, as this provision of 174 is separate and distinct from the importation and provides for an act done after importation. The authorities for this point are:

Pong Wing Quong vs. U. S., 111 Fed (2) 751;

Palermo vs. U.S., 112 Fed (2) 922;

Krench vs. U.S., 42 Fed. (2) 354; [61]

Kurczak vs. U.S., 14 Fed (2) 109.

In each of these cases the narcotics or liquor had already crossed the International Line, and after they crossed the Line, the defendants in each case did some act to conceal or facilitate the transportation of or otherwise the prohibited article. The best case being the case from the 9th Circuit;—Pong Wing Quong vs. U.S. 111 Fed (2) 751.

In that case, after the drugs were in the customs house, the defendant placed a false custom sticker on the trunk so that the trunk could pass the custom officials inspection. So, therefore, as a matter of law

as to this count, the defendant is not guilty as a matter of law, because he did not do any act to aid, assist or abet in the concealment or transportation of said prohibited drugs.

III.

The decision and judgment as to Count 3 is contrary to the law and the evidence in that the evidence is insufficient to sustain or justify the judgment.

Count 3 charges a conspiracy of the three defendants to do the act set forth in Counts 1 and 2.

If the Government's evidence is to be believed regardless of the denials of the defendants, of necessity in order to convict the defendants of the conspiracy "that although it is proper for Congress to create separate and distinct offenses growing out of the same transaction where it is necessary in proving one offense to prove every essential element of another growing out of the same act, conviction of former is a bar to prosecution for latter." Therefore, the conviction of the conspiracy and the substantive offenses in this case are inconsistent and cannot stand.

IV.

The Court erred as a matter of law in denying the motion for a directed verdict and denying the motion for a new trial.

The defendant states that since this decision of the Court [62] in this action that he has discovered evidence which he did not know and could not have discovered by reasonable diligence beforehand. This evidence is set forth in the affidavit of Frank Kramer

hereto attached, marked Exhibit A, incorporated in and made a part of this motion. And, as set forth therein, and as clearly shown during the trial of this case, the defendant from the hearing before the Commissioner was led to believe that Katherine Wilson would testify that a Mexican had given her the can of opium and that the defendant knew nothing about it, and that in so far as the hypodermic needles are concerned, the only information that he had was the information that he received from his wife; that she had seen Katherine Wilson buy the same. That after Mrs. Kramer had testified and the Court made a statement in substance and effect that he did not give credence to Mrs. Kramer's testimony, and that if Mrs. Kramer had known these things she should have told her husband before the car crossed the Line; That Mrs. Kramer became very much hurt and decided to try, if possible, to get evidence to substantiate her story. She went to Tijuana to see the druggist in the drug store there; that while in the drug store at Tijuana on the 9th day of October, according to her statement, she saw the druggist who waited upon her, but did not see the druggist who waited upon Katherine Wilson; that the druggist who waited upon her told her that he recognized her as having been in his store, but that he had no recollection of any transaction concerning hypodermic needles, and that under the law of Mexico, that no record was kept of the sales of such articles; that a child could buy them, and therefore, there was no record in the store of this transaction. Frank Kramer then requested Horace Appel, the attorney for Katherine Wilson to bring Katherine Wilson to

Horace Appel's office so that Frank Kramer could talk to her, and what took place at this interview, among other things, is what is set forth in the affidavit of Frank Kramer.

As to whether or not this testimony is newly discovered [63] is certainly a debatable question as a matter of law, but the fact remains that if Katherine Wilson did admit after the trial that she purchased the hypodermic needles as testified to by Mrs. Kramer, Katherine Wilson, being an accomplice and her testimony being subject to close scrutiny, certainly this would be very strong testimony to discredit all the rest of her testimony in view of the fact that she stated that Frank Kramer gave her both the can of opium and the narcotic needles, and the can of opium was found concealed under her clothes, and the narcotic needles were found in the pocket of her shirtwaist.

Wherefore, Appellant prays that the foregoing be settled and allowed by the Court as defendants and appellants bill of exceptions on appeal from the judgment herein and for all other purposes which a bill of exceptions may be properly used.

JOHN S. COOPER,

Attorney for defendant and
Appellant.

I have read the foregoing Bill of Exceptions, approved it, and stipulate that it may be filed.

CHARLES H. CARR,

U. S. Attorney

By WALTER S. BINNS,

Ass't. U. S. Attorney

The foregoing bill of exceptions is hereby settled and allowed. Jan. 19 1944.

RALPH E. JENNEY,
Judge. [64]

Received copy of the within.....
this 4 day of January, 1944.

CHARLES H. CARR,
By WALTER I. BINNS,
Attorney for Gov.

[Endorsed]: Lodged Jan. 4, 1944. Edmund L. Smith, Clerk, by Irwin Hames, Deputy Clerk.

[Endorsed]: Filed Jan. 19, 1944. Edmund L. Smith, Clerk, by Irwin Hames, Deputy Clerk.

[Endorsed]: No. 10593. United States Circuit Court of Appeals for the Ninth Circuit. Frank Kramer, Appellant, vs. United States of America, Appellee. Transcript of Record. Upon Appeal from the District Court of the United States for the Southern District of California, Southern Division.

Filed January 24, 1944.

PAUL P. O'BRIEN
Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.